

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

RIVER CITY CHRISTIAN REFORMED CHURCH

Respondent

and

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES
FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER
THOMSON LLP and COLDPOINT HOLDINGS LTD.**

Applicants

**MOTION RECORD
Returnable September 21, 2021**

September 17, 2021

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200
TD West Tower, Toronto-Dominion Centre
Toronto, ON M5K 1K7

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Lawyers for Coldpoint Holdings. Ltd.

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

RIVER CITY CHRISTIAN REFORMED CHURCH

Respondent

and

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES
FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER
THOMSON LLP and COLDPOINT HOLDINGS LTD.**

Applicants

NOTICE OF MOTION

THE APPLICANTS will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on September 21, 2021, at 9:30 a.m. (Eastern Time), or as soon after that time as the motion can be heard, by Zoom videoconference in accordance with the Changes to Commercial List operations in light of COVID-19 and the updated Notice to the Profession dated April 20, 2021, effective as of April 27, 2021, issued by Chief Justice Morawetz. Please refer to the conference details attached as **Schedule “A”** hereto in order to attend the application hearing, and advise if you intend to join the hearing by emailing Leanne M. Williams at lwilliams@tgf.ca.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An order in the form at Tab 3 of the Motion Record, including, among other things:
 - (a) Appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings

and properties of Trinity Centres Cambridge (“**TTC**”) including, but not limited to, the lands and premises municipally known as 15 Wellington Street, Cambridge, in the Province of Ontario (the “**Real Property**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended.

2. Such further and other relief as this Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

1. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Affidavit of David M. Wood sworn September 17, 2021.
2. Coldpoint Holdings Ltd. (“**Coldpoint**”) is an Ontario holding company and the first registered secured creditor of Trinity Centres Foundation (“**TCC**”), a single-purpose organization formed to acquire and manage the Real Property.
3. TCC is jointly controlled by River City Christian Reformed Church (“**RCC**”) and Trinity Centres Foundation (“**TCF**”). RCC is the primary tenant of the Real Property with an option to purchase.
4. TCC is indebted to Coldpoint in the amount of \$1,755,155.63 as at September 16, 2021 (the “**Indebtedness**”).
5. Pursuant to the terms of the Loan Agreement between Coldpoint and TCC, Coldpoint made two loans to TCC for acquisition and renovation of the Real Property, secured by first-ranking charges against title to the Real Property and through a General Security Agreement.

6. Pursuant to section 12(b) of the Loan Agreement, TCC provided a continuing warranty in favour of Coldpoint that, among other things, there would be no material litigation against it or its assets. Breach of this warranty constitutes an Event of Default under the Loan Agreement, permitting Coldpoint to accelerate repayment of the Indebtedness and making it immediately due and payable.
7. RCC issued a Statement of Claim on February 23, 2021, alleging oppression, fraud and misrepresentation against TCF and causing a breach of the warranty provided by TCC.
8. Coldpoint has demanded payment from TCC by a Demand Letter on March 11, 2021 together with the BIA Notice pursuant to Section 244 of the BIA. The 10-day notice period expired on March 22, 2021.
9. TCC has failed to repay its indebtedness to Coldpoint despite Coldpoint's demand.
10. Attempts to resolve the dispute between the parties through mediation on July 23, 2021 before The Honourable Todd L. Archibald have failed. Post-mediation discussions between Coldpoint and RCC in an attempt to find a resolution have similarly been unsuccessful.
11. At a scheduling motion on August 23, 2021 before Mr. Justice Dunphy, this court endorsed a sale of the Real Property and repayment of the mortgage as the best path forward.
12. The appointment of the Receiver is necessary to preserve, protect, and ultimately realize on the collateral subject to the Security.
13. It is just and equitable to appoint the Receiver in these circumstances.

14. Deloitte has consented to being appointed as Receiver.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this application:

15. the Affidavit of David M. Wood, sworn September 17, 2021;

16. Consent of Deloitte; and

17. such further and other evidence as counsel may advise and this Court may permit.

September 17, 2021

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Lawyers for Coldpoint Holdings. Ltd.

SCHEDULE “A”
Zoom Conference Details

Join Zoom Meeting

<https://tgf-ca.zoom.us/j/89145419204?pwd=ZDg2MEJlS1YrSkVnZlp4TUhTOWJDZz09>

Meeting ID: 891 4541 9204

Passcode: 567227

Participant one tap mobile

+16473744685,,89145419204#,# Canada (Toronto)

Host one tap mobile

+16473744685,,89145419204# Canada (Toronto)

Dial by your location

+1 587 328 1099 Canada (Calgary)

+1 613 209 3054 Canada (Ottawa)

+1 647 374 4685 Canada (Toronto)

+1 778 907 2071 Canada (Vancouver)

+1 204 272 7920 Canada (Winnipeg)

+1 438 809 7799 Canada (Montreal)

Meeting ID: 891 4541 9204

Find your local number: <https://tgf-ca.zoom.us/j/kw5lrPFVx>

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

and

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES
FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER
THOMSON LLP and COLDPOINT HOLDINGS LTD.**

Defendants

**SERVICE LIST
As at August 13, 2021**

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<p>AND TO:</p>	<p>WEINTRAUB ERSKINE HUANG LLP 365 Bay Street, Suite 501 Toronto, ON M5H 2V1 Tel: (416) 597-5408 Fax: (416) 306-8451</p> <p>Sara J. Erskine (LSO# 46856G) Email: sara.erskine@wehlitigation.com</p> <p>Vincent DeMarco (LSO#72851D) Email: Vincent.demarco@wehlitigation.com</p> <p>Lawyers for River City Christian Reformed Church</p>

AND TO:	<p>AIRD & BERLIS LLP Brookfield Place 181 Bay Street Suite 1800 Toronto, ON M5J 2T9 Tel: (416) 865-4742</p> <p>Mark van Zandvoort (LSO #59120U) Email: mvanzandvoort@airdberlis.com</p> <p>Codie R. Mitchell (LSO# 80939E) Email: cmitchell@airdberlis.com</p> <p>Lawyers for Graham Singh and Trinity Centres Foundation</p>
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AND TO:	<p>CRAWLEY McEWAN BRUSH LLP Suite 800 179 John Street Toronto ON M5T 1X4 Tel: (416) 217-0803 Fax: (416) 217-0220</p> <p>Anna Markiewicz (LSO#45460H) Email: amarkiewicz@cmlaw.ca</p> <p>Lawyers for Trinity Centres Cambridge</p>

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RIVER CITY CHRISTIAN REFORMED CHURCH

And

GRAHAM SINGH et al.

Plaintiff

Defendants

Court File No. CV-20-00646359-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **Kitchener**

NOTICE OF MOTION
(APPOINTMENT OF RECEIVER)

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Lawyers for Coldpoint Holdings Ltd.

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

and

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES
FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER
THOMSON LLP and COLDPOINT HOLDINGS LTD.**

Defendants

**AFFIDAVIT OF J. DAVID M. WOOD
(sworn September 17, 2021)**

I, **J. DAVID M. WOOD**, of the City of London, in the Province of Ontario, **MAKE
OATH AND SAY AS FOLLOWS:**

1. I am the President of Coldpoint Holdings Ltd. ("**Coldpoint**") and, as such, I have personal knowledge of the matters to which I hereinafter depose. Unless I indicate otherwise, the facts herein are within my own personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the sources and I believe those facts to be true.
2. This affidavit is sworn in support of a motion by Coldpoint for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of Trinity Centres Cambridge ("**TCC**") including, but not limited to, the lands

and premises municipally known as 15 Wellington Street, Cambridge, in the Province of Ontario (the “**Real Property**”).

Background

3. TCC is a single-purpose organization formed by River City Christian Reformed Church (“**RCC**”) and Trinity Centres Foundation (“**TCF**”) to acquire, manage and revitalize the Real Property for the benefit of the community.
4. RCC is a religious organization which conducts its operations from the Real Property. TCF is a charitable organization having its principal place of business in the Province of Quebec.
5. RCC and TCF jointly control the operations of TCC. RCC is the primary tenant of the Real Property and has an option to purchase the Real Property.
6. Coldpoint is an Ontario holding company which is affiliated with the Wood Development Group of companies (“**WDG**”). WDG is an organization with a rich history of community involvement and is committed to the development of properties for the benefit of the community.
7. Coldpoint is the first registered secured creditor of TCC. TCC is indebted to Coldpoint in the amount of \$1,755,155.63 as at September 16, 2021 (the “**Indebtedness**”).

The Credit Facilities and TCC’s Indebtedness

8. Pursuant to the loan agreement dated March 5, 2020 (the “**Loan Agreement**”), Coldpoint made a term loan credit facility (the “**Credit Facility**”) available to TCC in the total principal amount of \$2,024,800 plus interest and costs, to be utilized as follows:

- (i) the principal amount of \$1,384,800 for the purchase of the Real Property (the “**Acquisition Loan**”); and
- (ii) the principal amount of \$640,000 for future renovations to the Real Property (the “**Renovation Loan**”).

9. A copy of the Loan Agreement is attached as **Exhibit “A”**.

Loan and Security Documents

10. As security for all of its obligations to Coldpoint, TCC delivered security to Coldpoint including:

- (a) a first-ranking Charge/Mortgage in the principal amount of \$2,500,000 (the “**Charge**”) registered against title to the Real Property;
- (b) a first-ranking General Assignment of Rents registered against title to the Real Property (the “**Assignment of Rents**”); and
- (c) a first-ranking general security agreement, dated March 5, 2020 (the “**GSA**”), (collectively, the “**Security**”). Attached as **Exhibit “B”** are copies of the Security.

11. Coldpoint registered the Charge against title to the Property in the Land Registry Office for Waterloo (Kitchener) (the “**LRO**”) as Instrument No. R1584872 against PIN 03817-0022 (R) and as Instrument No. WR1247054 against PIN 03817-0091 (LT) on March 5, 2020. Coldpoint registered the Assignment of Rents against title to the Property in the LRO as Instrument No. R1584873 against PIN 03817-0022 (R) and as Instrument No. WR1247059 against PIN 03817-0091 (LT) on March 5, 2020. Copies of the abstract

pages evidencing registration of the Charge and Assignment of Rents are attached as **Exhibit “C”**.

12. Coldpoint registered its security interest in the assets of TCC under the *Personal Property Security Act* (Ontario) on March 2, 2020, against all classes of collateral, except for “consumer goods”, which is the only registration registered against TCC. Attached as **Exhibit “D”** is a copy of the PPSA Electronic Enquiry Result from the Ministry with a file currency of September 14, 2021 in respect of TCC.

Terms and Purpose of the Credit Facility

13. The Credit Facility was not granted on conventional lending terms. The Indebtedness bears interest at the rate of 2% per annum, calculated yearly. Pursuant to the terms of the Loan Agreement, TCC was not obligated to pay principal or interest on the Indebtedness until the 10th anniversary of the advancement of the Acquisition Loan, unless and until an Event of Default (as defined in the Loan Agreement) occurred.
14. The Credit Facility was granted to TCC in an effort to revive the Property for the benefit of the community. The Property had previously been a church building that had been abandoned for a number of years. I was approached about the possibility of financing this project by Reverend Graham Singh, a long-standing friend. It is my understanding that TCF’s mission is to transform vacant and/or underutilized church properties into vibrant community centres across Canada. TCF’s mission fits well with the goals of Coldpoint and the WDG.

15. Neither TCF nor RCC had the funds available to purchase and renovate the Real Property. As a result, Reverend Singh approached Coldpoint to fund the purchase of the Real Property and its renovation on very favourable terms which would allow for TCF to achieve its goal of revitalizing the Real Property for the benefit of the community and RCC to have a permanent home for its congregation. TCC was formed jointly by TCF and RCC as the vehicle to complete the transaction, renovate and manage the Real Property.

Deterioration of the Lending Relationship

Expressions of Concern

16. In or about early February 2021, I became aware that the relationship between RCC and TCF had deteriorated which culminated with RCC's issuance of the Statement of Claim dated February 23, 2021 (the "**Claim**") – the foundation of the default. Coldpoint was served with the Claim on February 25, 2021. The Claim, *inter alia*, makes material allegations of oppression, fraud and misrepresentation against TCF, seeks the appointment of a receiver over TCC, and seeks the return of certain funds in priority to the Security. A copy of the Claim is attached as **Exhibit "E"**.

The Demand

17. Pursuant to section 12(b) of the Loan Agreement, TCC provided a continuing warranty in favour of Coldpoint that there would be, among other things, no material litigation against it or its assets. The breach of this continuing warranty constitutes an Event of Default under the Loan Agreement. Upon the occurrence of an Event of Default, Coldpoint is entitled to accelerate payment of the Indebtedness making it immediately due and payable.

18. Consequently, by letter dated March 11, 2021 (the “**Demand Letter**”), Coldpoint demanded payment of the Indebtedness from TCC and together delivered a Notice of Intention to Enforce Security (the “**BIA Notice**”) pursuant to Section 244 of *Bankruptcy and Insolvency Act*. Coldpoint also terminated TCC’s ability to further draw on the Renovation Loan in accordance with the terms of the Loan Agreement. The 10-day notice period expired on March 22, 2021. Copies of the Demand Letter and BIA Notice are attached as **Exhibit “F”**.

19. By letter dated March 12, 2021, counsel to RCC advised that RCC disputed Coldpoint’s ability to issue the Demand Letter and BIA Notice as the Claim did not constitute “material litigation” pursuant to the Loan Agreement. By letter dated March 15, 2021, Coldpoint confirmed its position in respect of the issuance of the Demand Letter. Copies of the March 12 and March 15, 2021 correspondence are attached as **Exhibit “G”**.

Motion by RCC to Appoint a Receiver

20. By Notice of Motion dated March 15, 2021, RCC brought a motion within this proceeding in the Superior Court in Kitchener, Ontario for the appointment of an interim receiver-manager. The motion was objected to by the Defendants, including Coldpoint. I was advised by my counsel, Leanne Williams of Thornton Grout Finnigan (“**TGF**”) that, in order to adequately prepare materials and conduct cross examinations, the parties agreed to adjourn the motion to the week of May 10, 2021 on the terms set out in the interim order of Mr. Justice Gibson dated March 24, 2021 (the “**Interim Order**”), a copy of which is attached as **Exhibit “H”**.

21. The Interim Order was essentially designed to preserve the status quo, including a provision whereby Coldpoint was not be permitted to take steps to enforce its security, until RCC's motion for the appointment of an interim receiver-manager could be heard.
22. I have been advised by TGF that, at the return of RCC's motion on May 10, 2021, Mr. Justice Sloan ordered that the proceeding be provisionally transferred to the Commercial List and continued the provisions of the Interim Order with certain modifications. The Order of Mr. Justice Sloan dated May 20, 2021 is attached as **Exhibit "I"**.
23. Pursuant to the Order of Mr. Justice McEwen dated May 27, 2021, attached as **Exhibit "J"**, the proceeding was transferred to the Commercial List.
24. On May 28, 2021, the parties attend a case conference before Mr. Justice Dunphy wherein he suggested that the parties attempt to mediate the dispute. The parties agreed and attended a mediation before The Honourable Todd L. Archibald on July 23, 2021. Unfortunately, the mediation was not successful.
25. Coldpoint and RCC agreed to continue discussions in an effort to find a resolution to the outstanding issues between RCC, TCF and TCC to permit RCC to continue to occupy the Real Property on terms acceptable to the parties. Coldpoint proposed several potential solutions to RCC but none were accepted.
26. The parties attended a scheduling motion on August 23, 2021 before Mr. Justice Dunphy who confirmed by way of endorsement that "the best way forward for all concerned is to have the property sold and the mortgage repaid as quickly and efficiently as possible." A copy of the endorsement of Mr. Justice Dunphy is attached as **Exhibit "K"**.

The Appointment of a Receiver

27. The appointment of the Receiver is necessary to preserve, protect, and ultimately realize on the collateral subject to the Security.
28. The notice periods under the BIA Notices have expired. TCC has failed to repay its indebtedness to Coldpoint.
29. It is just and convenient to appoint the Receiver in these circumstances.
30. The proposed Order appointing the Receiver permits the Receiver to borrow funds from Coldpoint for the purpose of financing the receivership. If necessary, these borrowings will be secured by Receiver's certificates to be issued by the Receiver or the security held by Coldpoint upon the Borrower's assets.
31. Deloitte has consented to act as Receiver. A copy of Deloitte's consent to act as the Receiver is attached as **Exhibit "L"**.
32. I swear this affidavit in support of a motion by Coldpoint for the appointment of the Receiver on the terms set out in the draft Order located at Tab 3 of Coldpoint's Motion Record, and for no other or improper purpose.

SWORN remotely by J. DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely*.



Commissioner for Taking Affidavits



J. DAVID M. WOOD

EXHIBIT “A”

This is Exhibit "A" referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely*.

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

A Commissioner for taking affidavits

LOAN AGREEMENT

This Agreement is made the 5th day of March, 2020

BETWEEN

COLDPOINT HOLDINGS LIMITED

(the "Lender")

- and -

TRINITY CENTRES CAMBRIDGE

(the "Borrower")

WHEREAS the Borrower wishes to borrow and the Lender has agreed to lend to the Borrower \$2,024,800.00 CAD, on the terms hereinafter set out;

NOW THEREFORE IN CONSIDERATION OF the mutual covenants and agreements between the parties hereinafter set out and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties hereto, the parties hereby agree as follows:

1. **Loan Facility:** the Lender hereby agrees to provide to the Borrower a non-revolving loan up to the maximum aggregate amount of \$2,024,800.00 comprised of: (i) an acquisition loan (the "**Acquisition Loan**") in the amount of \$1,384,800.00 for assistance with the Borrower's purchase of the property municipally known as 15 Wellington Street, Cambridge, Ontario and more particularly described in Schedule "A" attached hereto (the "**Lands**"); and (ii) a renovation loan (the "**Renovation Loan**" and together with the Acquisition Loan, collectively the "**Loan**") in the amount of \$640,000.00 for the purpose of financing certain renovations to the existing structure(s) on the Lands (the "**Renovations**"), such Renovation Loan to be advanced in accordance the terms and conditions more particularly set out herein.
2. **Acquisition Loan:** The Acquisition Loan will be made available in a single draw and will be advanced to the Borrower on the date the Borrower completes the purchase of the Lands, subject to the satisfaction of the Conditions Precedent to Acquisition Loan set out herein.
3. **Conditions Precedent to Acquisition Loan:** On or before the advance of the Acquisition Loan, the following conditions shall have been satisfied: (a) the Borrower shall have provided to the Lender an executed copy of the agreement of purchase and sale regarding the Borrower's purchase of the Lands; (b) the Security Documents (as defined below) shall have been executed and delivered to the Lender and registered with the priority required herein at all appropriate registration offices, as applicable; (c) the Borrower shall have delivered to the Lender a certificate of property insurance for the Lands showing the Lender as an additional insured and first mortgagee and loss payee; (d) the Borrower shall have provided to the Lender an up-to-date PIN (or PINs) for the Lands and title to the Lands shall be satisfactory to the Lender, in its sole discretion; (e) the Borrower shall have provided evidence to the Lender that all realty taxes, local improvement charges and utilities with respect to the Lands have been paid (or will

be paid on closing of the acquisition of the Lands); and (f) the Lender having received either a title opinion from the Borrower's counsel or a lender's title insurance policy in a form and substance satisfactory to the Lender, in respect of the Mortgage (as defined below) against the fee simple interest of the Borrower in the Lands.

4. **Conditions Precedent to Renovation Loan:** The Renovation Loan shall not be available to the Borrower until: (i) the Conditions Precedent to the Acquisition Loan have been satisfied; (ii) the Borrower has confirmed to the Lender that it has hired a reputable general contractor (the "**Contractor**"), satisfactory to the Lender, acting reasonably, to carry out the Renovations. In this regard, the Borrower confirms that it has hired Schiedel Construction as its contractor and the Lender confirms it is satisfied with respect to same; and (iii) the Lender has received a certificate from the Borrower's architect and/or Contractor attaching the plans and specifications for the Renovations and confirming that such Renovations will comply with all applicable municipal and other governmental zoning and land use bylaws and regulations.
5. **Advances of the Renovation Loan:** Draws under the Renovation Loan shall be made available to the Borrower as follows:
 - (a) advances of the Renovation Loan ("**Advances**") shall be made from time to time during the Term (as hereinafter defined), in amounts of not less than **\$50,000.00** per advance, based on the progress of the Renovations. Advances are to be made no more frequently than once per calendar month;
 - (b) each request for an Advance (an "**Advance Request**") shall be made in writing, signed by a senior employee of the Borrower and include a certificate by a senior officer of the Contractor certifying the following: (i) the value of the work completed to date, (ii) the estimated cost to complete the Renovations and (iii) that construction of the Renovations to date has been carried out in accordance with the plans and specifications initially delivered to and approved by the Lender, and all applicable laws, building codes and any building permits opened in connection with the Renovations; and
 - (c) the Lender shall hold back from each Advance ten percent (10%) of the amount of such Advance, or any other amount sufficient to protect the priority of the Lender's security under any applicable construction or builder's lien legislation. Such holdbacks shall be released when the time within which any such liens related to the construction of the Renovations may be claimed has expired, and no claims with respect to same remain outstanding. In this regard, the Borrower shall publish and submit to the Lender the dates/certificates of substantial and final completion of the Renovations in the manner provided under any applicable construction and builder's lien legislation.
6. **Agreement to Pay:** the Borrower hereby agrees with the Lender to pay to the Lender all amounts outstanding under the Loan pursuant to the terms of this Loan Agreement.
7. **Term:** the term of the Loan shall be for ten (10) years commencing on the date of the advance of the Acquisition Loan and repayable on the 10th anniversary of such date, including all outstanding interest accrued thereon to the date of repayment (the "**Maturity Date**"), unless otherwise accelerated pursuant to Section 16.

8. **Interest Rate:** 2.00% per annum, calculated yearly, not in advance and accrued and payable on the Maturity Date, unless otherwise accelerated pursuant to Section 16.
9. **Prepayment:** The Loan and all accrued and unpaid interest is fully open for repayment at any time, in part or in full, without penalty upon prior written notice to the Lender.
10. **Security:** As general and continuing security for the payment and performance by the Borrower of its obligations to the Lender herein, the Borrower covenants and agrees to deliver to the Lender the following (the "**Security Documents**") completed in a form and manner satisfactory to the Lender's lawyers, acting reasonably:
 - (a) a first-ranking Collateral Mortgage securing the principal amount of \$2,500,000.00 (the "**Mortgage**") to be registered against title to the Lands;
 - (b) a general assignment of rents and leases to be registered against title to the Lands;
 - (c) a site specific general security agreement;
 - (d) assignment of insurance, contracts and warranties with respect to the Lands with the Lender listed as first mortgagee, additional insured and loss payee on the Borrower's property insurance policy;
 - (e) an environmental warranty and indemnity with respect to the Lands; and
 - (f) any other legal documentation considered necessary by the Lender's solicitors whether prior or subsequent to advancing funds, to preserve efficacy and ranking of the Lender's security.
11. **Condition:** The Lender shall have no obligation to make any advance under the Loan unless and until the Borrower has executed and delivered the Security Documents to and in favour of the Lender.
12. **Representations and Warranties of the Borrower:** The Borrower represents and warrants to the Lender, which representations and warranties shall be deemed to be continuously repeated so long as any amounts or commitments remain outstanding under this Agreement, that:
 - (a) the Borrower:
 - i. is duly organized and validly existing under the laws of its jurisdiction of incorporation or organization and is duly qualified to carry on business in each jurisdiction in which it owns property or assets or carries on business;
 - ii. has the power and authority to own or lease its property, carry on business, enter into this Agreement and the Security Documents to which it is a party, and to perform its obligations hereunder and thereunder;
 - iii. has the power and authority to execute, deliver and perform its obligations under this Agreement and the Security Documents to which it is a party, and all

other actions required to do so have been taken;

- iv. has duly executed and delivered this Agreement and the Security Documents to which it is a party, and each such document or agreement constitutes a legal, valid and binding obligation, enforceable in accordance with its terms, subject to the rights of creditors generally and to the rules of equity; and
 - v. the execution, delivery and performance by it of this Agreement, each Security Document to which it is a party, and the transactions contemplated thereby does not, and will not, contravene, violate or result in a breach of, its constating documents, any by-law, any shareholders' agreement, applicable laws, regulations or material contracts;
- (b) there is no material litigation, investigation, claim or proceeding pending, or to the knowledge of the Borrower, threatened, by or against it or its respective assets;
 - (c) it has good and marketable title to its property and assets free and clear of all liens, security interests, encumbrances or other claims, other than those expressly permitted in this Agreement or by the Lender in writing;
 - (d) it is in compliance with, and operates its organization in compliance with, all applicable laws and regulations (including environmental, labour and employment, tax, health and safety, anti-money laundering, sanctions, and Canadian trade laws and regulations); and
 - (e) it has in full force and effect policies of insurance with sound and reputable insurance companies in such amounts, with such deductibles, and covering such risks as are customarily carried by companies engaged in similar businesses. All premiums with respect to such policies that are due and payable have been paid.

13. **Positive Covenants:** So long as any amounts or commitments are outstanding under this Agreement, the Borrower covenants and agrees with the Lender that it shall:

- (a) maintain and preserve its existence, organization and status in its jurisdiction of formation and in each jurisdiction in which it carries on business and make or obtain, and maintain in good standing, all corporate or other applicable filings, permits, licenses, registrations and approvals necessary to do so and required to own and operate its assets;
- (b) maintain adequate insurance on its business, property and assets, including the Lands, in such amounts and covering such risks as are acceptable to the Lender, with the Lender noted as loss payee on property insurance policies and additional insured on liability insurance policies, and provide the Lender with not less than 30 days' prior written notice of any cancellation or change in insurance;
- (c) maintain its property and assets, including the Lands, in good repair and working condition (ordinary wear and tear excepted) and continue to carry on the business currently being conducted by the Borrower at the date of this Agreement in accordance with standard practice for a church of a similar size and character in a comparable

location;

- (d) comply in all material respects with all applicable laws, regulations, permits and approvals (including, without limitation, environmental, health and safety, labour and employment, anti-money laundering, sanctions, and Canadian trade laws and regulations) and all building, occupancy and other permits, licenses and approvals; and
- (e) pay, when due, all required taxes and remittances including, without limitation, any applicable corporate taxes, income taxes, real property taxes, all employee source deductions (including income taxes, employment insurance and Canada pension plans), sales taxes (both federal and provincial), payroll taxes and workers compensation payments and file, in a timely fashion, all required tax returns and reports.

14. **Negative Covenants:** So long as any amounts or commitments are outstanding under this Agreement, the Borrower covenants and agrees with the Lender that it shall not, without the prior written consent of the Lender:

- (a) create, incur, assume or permit to exist any indebtedness for borrowed money or guarantee or agree to indemnify the obligations of any other person, other than indebtedness to the Lender under this Agreement;
- (b) create, grant, incur or permit to exist any lien, security interest, charge, mortgage, pledge, right or encumbrance of any nature on any of its assets, property or undertaking now owned or hereafter acquired, other than the security interests in favour of the Lender created by the Security Documents; and
- (c) encumber, sell, assign or otherwise dispose of the Lands without the prior written consent of the Lender. For clarity, the Lender acknowledges and confirms that the Borrower is permitted to lease, licence, sub-lease, and/or sub-licence the Lands to one or more third parties.

15. **Events of Default:** Following the occurrence of any one or more of the following events (each, an "**Event of Default**"), the Lender may accelerate the payment of any or all principal and interest owing that is not otherwise payable on demand, and cancel its commitments under this Agreement:

- (a) the Borrower fails to pay (i) any principal amount owing under this Agreement when due, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (ii) any interest, fee or other non-principal amount payable under, or in connection with, this Agreement when due and payable and such failure remains unremedied for a period of five (5) days;
- (b) any representation, warranty, certification or other statement of fact made or deemed made by or on behalf of the Borrower, in any Security Document or in any certificate or other document furnished to the Lender under or in connection with this Agreement proves to have been false or misleading in any material respect;
- (c) the Borrower fails to perform or observe any covenant, term, condition or agreement

contained in this Agreement or any Security Document (other than as provided in (a) or (b) above), and such failure continues unremedied for a period of ten (10) days after its written notice of such failure to the Borrower from the Lender;

- (d) there is a Change of Control of the Borrower, as reasonably determined by the Lender; or
- (e) the Borrower:
 - i. (A) commences or institutes any application, proceeding or other action under any statute, rule or regulation relating to bankruptcy, insolvency, winding-up, reorganization, administration, plans of arrangement, relief or protection of debtors for itself or for all or any part of its assets, or (B) has commenced against it in a court of competent jurisdiction any application, proceeding or other action of a nature referred to in (A) which (i) results in the entry of an order for relief or any such adjudication or appointment, or (ii) remains undismissed, undischarged, unstayed or unbonded for forty-five (45) days;
 - ii. makes a general assignment for the benefit of its creditors;
 - iii. has a receiver, interim receiver, receiver manager or other trustee appointed with respect to all or any part of its assets; or
 - iv. becomes unable to, or admits in writing its inability to, pay its debts as they become due, or commits any other act of bankruptcy.

For the purposes of this Section 15, "Change of Control" means (i) any event as a result of or following which any person or organization other than Trinity Centres Foundation holds the right to cast more than 50% of the votes at a meeting of the members of the Borrower; or (ii) the sale or other transfer of all or substantially all of the assets of the Borrower.

16. **Remedies on Default:** In addition to any other rights of the Lender hereunder, following the occurrence of an Event of Default, the obligations of the Lender to make any further loans or extend any further credit under this Agreement shall automatically be terminated and all amounts outstanding under this Agreement shall become immediately due and payable without any notice and without presentment, protest, demand, notice of dishonour or any other demand whatsoever (all of which are expressly waived by the Borrower). On acceleration of the payment of principal and interest hereunder:
- (a) the Borrower shall immediately pay to the Lender all amounts outstanding under this Agreement, including all principal, interest and fees, as applicable;
 - (b) the Security Documents shall become immediately enforceable;
 - (c) the Lender may, in its sole discretion, exercise any right or recourse and proceed by any action, suit, remedy or proceeding against the Borrower as the Lender is entitled to take under any applicable law, this Agreement, the Security Documents and any other documents and agreements delivered in connection with this Agreement for the recovery

and payment in full of all obligations of the Borrower to the Lender, and may take such other action as the Lender in its sole discretion deems advisable to enforce its rights and remedies, all without any notice, presentment, demand, protest or other formality, all of which are expressly waived by the Borrower; and

- (d) no remedy for the enforcement of the rights of the Lender shall be exclusive of, or dependent on, any other remedy, but any one or more of such remedies may from time to time be exercised independently or in combination with any other remedy.

17. **Due on Sale:** The Borrower agrees that:

- (a) if the Property is Transferred without the Lender's prior written consent, the Lender shall have the right, at its sole option, to immediately declare all outstanding amounts of the Loan and all accrued and unpaid interest thereon to the Lender immediately due and payable. Consent to one such Transfer shall not be deemed to be a waiver of the right to require consent to future or successive transactions;
- (b) the Borrower will provide reasonable notice to the Lender of any anticipated or impending transaction which would require the consent of the Lender under this Section 17 and any other section of this Agreement, together with such reasonable information as the Lender may require to determine whether or not to grant its consent thereto.

In this Agreement, "**Transfer**" means (a) any conveyance, assignment, transfer, sale, granting or creation of an option or trust with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) any legal or beneficial interest in the Lands or any part thereof, (b) any Change of Control of the Borrower or any beneficial or unregistered owner of any part of the Lands from that existing as of the date of this Agreement, (c) any amalgamation, arrangement or other similar corporate change of the Borrower or any beneficial or unregistered of any part of the Lands from that existing as of the date of this Agreement, or (d) any agreement to do or complete any of the matters referred to in (a), (b) or (c) above. Notwithstanding anything herein contained to the contrary, the Lender acknowledges and confirms that the Borrower is permitted to lease, licence, sub-lease, and/or sub-licence the Lands to one or more third parties.

18. **Indemnity:** The Borrower agrees to indemnify and hold harmless the Lender and each of its affiliates and the directors, officers, employees, partners, agents, trustees, administrators, managers, advisors and representatives of it and its affiliates (each, an "**Indemnified Party**") from and against, any and all claims, damages, losses, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnified Party), incurred by any Indemnified Party or asserted against any Indemnified Party by any person (including the Borrower or any other Loan Party) other than an Indemnified Party, arising out of, in connection with, or by reason of:

- (a) the execution or delivery of this Agreement or any agreement or instrument contemplated by this Agreement, the performance by the parties thereto of their respective obligations under this Agreement or any Security Document or the consummation of the transactions contemplated by such documents;

- (b) any actual or alleged presence or release of hazardous materials on or from the Lands, or any environmental liability related to the Borrower or any of its subsidiaries in any way; or
- (c) any actual or prospective claim, investigation, litigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any Indemnified Party is a party thereto,

provided that, such indemnity shall not be available to any Indemnified Party to the extent that such claims, damages, losses, liabilities or related expenses are determined by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnified Party.

19. **Notices:** any notice required or permitted to be given under this Agreement shall be in writing and shall be sent by registered mail (postage prepaid, return receipt requested) overnight courier service, or personally delivered to the receiving party. All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth below:

(a) If to the Borrower: 1439 rue Sainte-Catherine Ouest
Montreal, Quebec
H3G 1S6

Attention: Graham Singh
Telephone:
E-mail:

(b) If to the Lender: Coldpoint Holdings Limited
5068 Whitelaw Road - Unit 1
Guelph, Ontario N1H 6J3

Attention: David Wood
Telephone:
Email: dwood@apadvisers.com

Any communication so sent shall be deemed to have been given on the earliest of:

- (a) when actually delivered;
- (b) the first business day after deposit with an overnight courier serviced; or
- (c) the third business day after deposit in the mail, by registered mail, postage paid to the address of the intended addressee, unless on the date of mailing or on or before such third Business Day thereafter, there is a general disruption in the operation of the postal

service in Canada which does or is likely to delay delivery of mail, in which event such communications shall be personally delivered or sent by private prepaid courier.

Any party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

For the purposes of this Agreement the term "Business Day" means a day other than a Saturday, Sunday or legal holiday on which banks located in Toronto, Ontario are not open for general banking business.

20. **Successors and Assigns** - This Agreement shall enure to the benefit of the Lender and the Borrower and their respective successors and assigns.
21. **Time** - Time shall be of the essence of the Agreement
22. **Governing Law** - This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
23. **Entire Agreement** - This Agreement embodies the entire agreement of understanding between the Lender and the Borrower in this regard and supercedes all prior agreements and understandings between the parties relating to the subject matter hereof and thereof
24. **Counterparts** - This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one document.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the parties have duly executed this Agreement on the date first written above.

Borrower:

TRINITY CENTRES CAMBRIDGE

Per: 

Name: Narima Whitman

Title: Director and Secretary

I have authority to bind the Borrower

Lender:

COLDPOINT HOLDINGS LIMITED

Per: _____

Name: David Wood

Title: Chairman

I have authority to bind the
Corporation

IN WITNESS WHEREOF the parties have duly executed this Agreement on the date first written above.

Borrower:

TRINITY CENTRES CAMBRIDGE

Per: _____

Name: Narima Whitman

Title: Secretary

I have authority to bind the Borrower

Lender:

COLDPOINT HOLDINGS LIMITED

Per: _____

Name: David Wood

Title: Chairman

I have authority to bind the
Corporation

SCHEDULE "A"

The Lands:

Municipal Address: 15 Wellington Street, Cambridge, Ontario

Legal Description

PT LT 18 PL 455 CAMBRIDGE AS IN D31327; CAMBRIDGE

PIN: 03817-0091 (LT)

and

LT 3 E/S WELLINGTON ST & S/S BEVERLY ST PL 615 CAMBRIDGE; CAMBRIDGE

PIN: 03817-0022 (R)

EXHIBIT “B”

This is Exhibit "B" referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely.*

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

A Commissioner for taking affidavits

Properties

PIN 03817 - 0091 LT *Interest/Estate* Fee Simple
Description PT LT 18 PL 455 CAMBRIDGE AS IN D31327; CAMBRIDGE
Address 15 WELLINGTON STREET
 CAMBRIDGE

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name TRINITY CENTRES CAMBRIDGE
Address for Service 1439 rue Sainte-Catherine Ouest
 Montreal, Quebec
 H3G 1S6

I, Narima Whitman, Director and Secretary, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name COLDPOINT HOLDINGS LIMITED
Address for Service 5068 Whitelaw Road
 Unit 1
 Guelph, Ontario
 N1H 6J3

Statements

Schedule: See Schedules

Provisions

Principal \$2,500,000.00 *Currency* CDN
Calculation Period See Schedule
Balance Due Date See Schedule
Interest Rate See Schedule
Payments
Interest Adjustment Date
Payment Date See Schedule
First Payment Date
Last Payment Date
Standard Charge Terms 200033
Insurance Amount Full insurable value
Guarantor

Signed By

Julianne Rebecca Cerelli 365 Bay Street Suite 800 acting for Signed 2020 03 05
 Toronto
 M5H 2V1
 Chargor(s)

Tel 416-361-3121

Fax 416-361-1790

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

WILDEBOER DELLELCE LLP (TORONTO OFFICE) 365 Bay Street Suite 800
 Toronto
 M5H 2V1

2020 03 05

Tel 416-361-3121

Fax 416-361-1790

Fees/Taxes/Payment

Statutory Registration Fee	\$65.05
Total Paid	\$65.05

File Number

Chargor Client File Number :	245044.3
Chargee Client File Number :	191030

ADDITIONAL PROVISIONS

WHEREAS this Charge is given by the Chargor as continuing security for the repayment by the Chargor to the Chargee of the indebtedness of the Chargor to the Chargee.

NOW THEREFORE WITNESSETH THAT in consideration of the mutual covenants herein exchanged, the sum of Ten Dollars (\$10.00) and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto), the parties hereby covenant and agree as follows:

1. **Grant of Charge.** The registration of this Charge/Mortgage (the “**Charge**”) is pursuant to the terms of a loan agreement made between the Chargee and the Chargor and dated March 5, 2020, (the “**Loan Agreement**”). The Chargor, being the registered owner of a freehold estate in fee simple in the property described in the "*Properties*" section of this Charge/Mortgage of Land (the “**Charged Property**”), as security for the repayment of all monies owing by Chargor to the Chargee hereunder and the performance and observance of the obligations and liabilities of the Chargor hereunder, does hereby grant, mortgage and charge to the Chargee, all of its estate, right, title and interest in and to the Charged Property and agrees to and with the Chargee as hereinafter provided, all subject to and in accordance with the terms and provisions hereof. Capitalized terms not defined herein shall have the meaning ascribed to them in the Loan Agreement.
2. **Term.** The term of the Loan shall be for ten (10) years commencing on the date of the advance of the Acquisition Loan and repayable on the tenth (10th) anniversary (the “**Maturity Date**”).
3. **Interest & Payments.** Interest shall be payable at 2.00% per annum, calculated yearly, not in advance.

All accrued interest shall be payable on the Maturity Date.
4. **Pre-Payment.** The Chargor shall have the right to pre-pay, in whole or in part, the outstanding principal at any time upon prior written notice to the Chargee without penalty.
5. **Renewal.** Any renewal beyond the Maturity Date shall be made in the sole unfettered discretion of the Chargee and may be unreasonably denied.
6. **Discharge Fee.** At discharge, the Chargor shall pay to the Chargee a discharge fee of \$100.00 along with all of the Chargee’s legal fees related to the discharge of this charge.
7. **Non-Transferable.** The Charge is not transferable or assumable except at the option of the Chargee.
8. **Due on Sale.** The Chargor covenants and agrees with the Chargee that:
 - (a) if the Charged Property is Transferred without the Lender's prior written consent, the Chargee shall have the right, at its sole option, to immediately declare all outstanding amounts of the Loan and all accrued and unpaid interest thereon to the Chargee immediately due and payable. Consent to one such Transfer shall not be deemed to be a waiver of the right to require consent to future or successive transactions; and
 - (b) the Chargee will provide reasonable notice to the Chargor of any anticipated or impending transaction which would require the consent of the Chargee, together with

such reasonable information as the Chargor may require to determine whether or not to grant its consent thereto.

“Transfer” means (a) any conveyance, assignment, transfer, sale, granting or creation of an option or trust with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) any legal or beneficial interest in the Charged Property or any part thereof, (b) any Change of Control (as defined in the Loan Agreement) of the Chargee or any beneficial or unregistered ownership of any part of the Charged Property from that existing as of the date of the Loan Agreement, (c) any amalgamation, arrangement or other similar corporate change of the Chargee or any beneficial or unregistered ownership of any part of the Charged Property from that existing as of the date of the Loan Agreement, or (d) any agreement to do or complete any of the matters referred to in (a), (b) or (c) above. Notwithstanding anything herein contained, the Chargee acknowledges and confirms that the Chargor is permitted to lease, licence, sub-lease and/or sub-licence the Charged Property to one or more third parties.

9. **Subsequent Encumbrance.** The Chargor shall not further encumber the Charged Property without the Chargee’s prior written consent, which consent may be arbitrarily withheld by the Chargee for any reason.
10. **Payment of Costs.** The Chargor will pay all reasonable out of pocket expenses incurred by the Chargee including but not limited to costs for property searches and realty tax payment verifications. Any such expenses will be added to the principal amount outstanding if not paid within ten (10) days of demand for payment and shall be a charge upon the Charged Property and bear interest at the Interest Rate.
11. **Collection of Information.** The Chargor shall provide all information the Chargee may reasonably require to complete periodic reviews including, but not limited to realty tax certificates, bank statements, mortgage statements and/or property insurance documents.
12. **Event of Default.** The occurrence of an event of default under this Charge shall constitute an occurrence of an event of default under the Loan Agreement and the occurrence of an event of default under the Loan Agreement shall constitute an occurrence of an event of default under this Charge.
13. **Conflict:** If there is a conflict or inconsistency between any provision of this Charge and the Loan Agreement or any other loan or security document including but not limited to the Standard Charge Terms incorporated into this Charge by way of reference, the Chargee shall be entitled to choose which provision will prevail.

FOR OFFICE USE ONLY

Number R1584872
CERTIFICATE OF REGISTRATION
2020-03-05 PM 16:24

Waterloo
 No. 58
 Kitchener
 Land Registrar

New Property Identifiers

Additional: See Schedule

Executions

Additional: See Schedule

(1) Registry Land Titles (2) Page 1 of _____ pages

(3) Property Identifier(s) Block Property
 Firstly: 03817 - 0022 (R)
 Secondly: 03817-0091 (LT) Additional: See Schedule

(4) Principal Amount
TWO MILLION FIVE HUNDRED THOUSAND
 Dollars \$ **2,500,000.00**

(5) Description
Firstly: (Registry) PIN 03817-0022 (R)
Lot 3, East Side of Wellington Street and South Side of Beverly Street, Plan 615; City of Cambridge, Regional Municipality of Waterloo, being all of the PIN.
Secondly: (Land Titles) PIN 03817-0091 (LT)
Part Lot 18, Plan 455, as in D31327; City of Cambridge, Regional Municipality of Waterloo, being all of the PIN.

(6) This Document Contains (a) Redescription New Easement Plan/Sketch (b) Schedule for: Description Additional Parties Other (7) Interest/Estate Charged Fee Simple

(8) Standard Charge Terms — The parties agree to be bound by the provisions in Standard Charge Terms filed as number **200033** and the Chargor(s) hereby acknowledge(s) receipt of a copy of these terms.

(9) Payment Provisions (a) Principal Amount \$ **2,500,000.00** (b) Interest Rate **See Schedule** % per annum (c) Calculation Period **See Schedule**

(d) Adjustment Date	Y	M	D	(e) Date and Period	(f) Payment Date	Y	M	D
				See Schedule				
(g) Payment Date				(h) Amount of Each Payment See Schedule	Dollars \$			
(i) Balance Due Date				(j) Insurance Full insurable value	Dollars \$			

(10) Additional Provisions **See Schedule**

Continued on Schedule

(11) Chargor(s) The chargor hereby charges the land to the chargee and certifies that the chargor is at least eighteen years old and that

The chargor(s) acknowledge(s) receipt of a true copy of this charge.
 Name(s) **TRINITY CENTRES CAMBRIDGE**

Signature(s) *Narima Whitman*
 Per: **Name: Narima Whitman**
Title: Director and Secretary

Date of Signature
 Y M D
2020 03 05

I/We have authority to bind the Corporation.
 Per: _____
 Name: _____
 Title: _____

(12) Spouse(s) of Chargor(s) I hereby consent to this transaction.
 Name(s) **N/A**

Signature(s) _____
 Date of Signature
 Y M D

(13) Chargor(s) Address for Service
1439 rue Sainte-Catherine Ouest, Montreal, Quebec H3G 1S6

(14) Chargee(s)
COLDPOINT HOLDINGS LIMITED

(15) Chargee(s) Address for Service
5068 Whitelaw Road - Unit 1, Guelph, Ontario N1H 6J3

(16) Assessment Roll Number of Property

Cty.	Mun.	Map	Sub.	Par.
30	06	080	017	12600

(17) Municipal Address of Property
**15 Wellington Street
 Cambridge, Ontario N1R 3Y4**

(18) Document Prepared by:
**Wildeboer Dellelce LLP
 365 Bay Street, Suite 800
 Toronto, Ontario
 M5H 2V1**

Fees	
Registration Fee	
Total	

FOR OFFICE USE ONLY

Additional Property Identifier(s) and/or Other Information

ADDITIONAL PROVISIONS

WHEREAS this Charge is given by the Chargor as continuing security for the repayment by the Chargor to the Chargee of the indebtedness of the Chargor to the Chargee,

NOW THEREFORE WITNESSETH THAT in consideration of the mutual covenants herein exchanged, the sum of Ten Dollars (\$10.00) and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto), the parties hereby covenant and agree as follows:

1. **Grant of Charge.** The registration of this Charge/Mortgage (the "Charge") is pursuant to the terms of a loan agreement made between the Chargee and the Chargor and dated _____, 2020, (the "Loan Agreement"). The Chargor, being the registered owner of a freehold estate in fee simple in the property described in the "Properties" section of this Charge/Mortgage of Land (the "Charged Property"), as security for the repayment of all monies owing by Chargor to the Chargee hereunder and the performance and observance of the obligations and liabilities of the Chargor hereunder, does hereby grant, mortgage and charge to the Chargee, all of its estate, right, title and interest in and to the Charged Property and agrees to and with the Chargee as hereinafter provided, all subject to and in accordance with the terms and provisions hereof. Capitalized terms not defined herein shall have the meaning ascribed to them in the Loan Agreement.
 2. **Term.** The term of the Loan shall be for ten (10) years commencing on the date of the advance of the Acquisition Loan and repayable on the tenth (10th) anniversary (the "Maturity Date").
 3. **Interest & Payments.** Interest shall be payable at 2.00% per annum, calculated yearly, not in advance. .
All accrued interest shall be payable on the Maturity Date.
 4. **Pre-Payment.** The Chargor shall have the right to pre-pay, in whole or in part, the outstanding principal at any time upon prior written notice to the Chargee without penalty.
 5. **Renewal.** Any renewal beyond the Maturity Date shall be made in the sole unfettered discretion of the Chargee and may be unreasonably denied.
 6. **Discharge Fee.** At discharge, the Chargor shall pay to the Chargee a discharge fee of \$100.00 along with all of the Chargee's legal fees related to the discharge of this charge.
 7. **Non-Transferable.** The Charge is not transferable or assumable except at the option of the Chargee.
 8. **Due on Sale.** The Chargor covenants and agrees with the Chargee that:
 - (a) if the Charged Property is Transferred without the Lender's prior written consent, the Chargee shall have the right, at its sole option, to immediately declare all outstanding amounts of the Loan and all accrued and unpaid interest thereon to the Chargee immediately due and payable. Consent to one such Transfer shall not be deemed to be a waiver of the right to require consent to future or successive transactions; and
 - (b) the Chargee will provide reasonable notice to the Chargor of any anticipated or impending transaction which would require the consent of the Chargee, together with such reasonable information as the Chargor may require to determine whether or not to grant its consent thereto.
- "Transfer" means (a) any conveyance, assignment, transfer, sale, granting or creation of an option or trust with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) any legal or beneficial interest in the Charged Property or any part thereof, (b) any Change of Control (as defined in the Loan Agreement) of the Chargee or any beneficial or unregistered ownership of any part of the Charged Property from that existing as of the date of the Loan Agreement, (c) any amalgamation, arrangement or other similar corporate change of the Chargee or any beneficial or unregistered ownership of any part of the Charged Property from that existing as of the date of the Loan Agreement, or (d) any agreement to do or complete any of the matters referred to in (a), (b) or (c) above. Notwithstanding anything herein contained, the Chargee acknowledges and confirms that the Chargor is permitted to lease, licence, sub-lease and/or sub-licence the Charged Property to one or more third parties.
9. **Subsequent Encumbrance.** The Chargor shall not further encumber the Charged Property without the Chargee's prior written consent, which consent may be arbitrarily withheld by the Chargee for any reason.
 10. **Payment of Costs.** The Chargor will pay all reasonable out of pocket expenses incurred by the Chargee including but not limited to costs for property searches and realty tax payment verifications. Any such expenses will be added to the principal amount outstanding if not paid within ten (10) days of demand for payment and shall be a

Additional Property Identifier(s) and/or Other Information

charge upon the Charged Property and bear interest at the Interest Rate.

11. **Collection of Information.** The Chargor shall provide all information the Chargee may reasonably require to complete periodic reviews including, but not limited to realty tax certificates, bank statements, mortgage statements and/or property insurance documents.
12. **Event of Default.** The occurrence of an event of default under this Charge shall constitute an occurrence of an event of default under the Loan Agreement and the occurrence of an event of default under the Loan Agreement shall constitute an occurrence of an event of default under this Charge.
13. **Conflict:** If there is a conflict or inconsistency between any provision of this Charge and the Loan Agreement or any other loan or security document including but not limited to the Standard Charge Terms incorporated into this Charge by way of reference, the Chargee shall be entitled to choose which provision will prevail.

General Assignment of Rents

THIS Assignment of Leases and Rents (as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time, this "**Assignment**"), dated as of March 5, 2020

BETWEEN:

TRINITY CENTRES CAMBRIDGE,

as assignor (hereinafter referred to, including its successors and assigns, as "**Assignor**"),

- and -

COLDPOINT HOLDINGS LIMITED,

as assignee (hereinafter referred to, including its successors and assigns, as "**Assignee**"),

WHEREAS the Assignee is the owner of those lands and premises municipally known as 15 Wellington Street, Cambridge, Ontario and more particularly described in schedule "A" attached hereto, together with all buildings structures and improvements now or hereafter located thereon (collectively referred to as the "**Property**").

AND WHEREAS, the Assignor has made or will make a loan to the Assignee in the up to a maximum principal amount of \$2,024,800.00 (the "**Loan**") pursuant to the loan agreement made as of the date hereof between the Assignor and the Assignee (the "**Loan Agreement**").

AND WHEREAS, the Loan is secured by a charge/mortgage of land granted by the Assignor to the Assignee pursuant to a charge/mortgage of land registered on March 5, 2020 at the Registry Office for the Land Titles Division of Waterloo (Kitchener) No. 58 as Instrument No. WR1247054 (the "**Charge**") together with other ancillary documents (collectively referred to as the, "**Loan Documents**").

AND WHEREAS, the Assignor has leased or granted rights of use or occupation or licence with respect to the Property and may from time to time lease or grant rights of use or occupation or license with respect to the Property.

AND WHEREAS, as consideration for the making of the Loan, the Assignor has agreed to assign to the Assignee all of the leases, licenses, tenancy agreements, occupancy agreements or other agreements, whether written or oral, and whether now existing or hereafter entered into, for or relating to the lease, use or occupancy of all or part of the Property (in each case, as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time, herein individually referred to as a "**Lease**", collectively referred to as the "**Leases**") and all rents and other payments now or hereafter due and payable under the Leases (the "**Rents**") on the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the respective meanings assigned to such terms in the Loan Agreement.

“**Obligations**” means all of the obligations, liabilities and indebtedness (present and future, absolute or contingent, matured or otherwise) of any kind whatsoever of the Assignor pursuant to, in connection with or relating to the Loan Agreement or the Charge.

2. Assignment.

2.1 Grant of Security Interest. The Assignor hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, as security and grants a security interest in (as continuing collateral and security for the Obligations) all of the Assignor's right, title, benefit and interest in and to (a) all Leases; (b) all Rents; (c) the benefits of each and every present and future guarantee of all or any of the obligations under any of the Leases with full power and authority to demand, collect, sue for, recover, receive and give receipts for the Rents, and to enforce payment thereof and to enforce performance of all the Leases in the name of the Assignor, its successors and assigns or otherwise. Notwithstanding such assignment, the Assignee will not be responsible or liable for any obligations of the Assignor in respect of the Leases.

2.2 Right to Collect Rent. Provided and it is hereby expressly agreed that the Assignor shall be permitted to collect and receive the Rents as and when the same shall become due and payable according to the terms of the Leases unless and until an Event of Default (as defined in the Loan Agreement) has occurred and for so long as it is continuing under the Charge or Loan Agreement and thereafter the Assignee gives notice to the tenant, user, occupier, licensee or grantor thereunder requiring the same to pay the Rents to the Assignee provided that nothing herein shall release, discharge, postpone, amend or otherwise affect the present assignment and security interest in and to the Leases and the Rents and the immediate attachment thereof in accordance with the Loan Agreement.

2.3 Waiver. The Assignee may waive any Event of Default and shall not be bound to serve any notice on any lessees on the happening of any Event of Default. No waiver shall extend to any subsequent Event of Default.

3. Covenants. The Assignor hereby represents, warrants, covenants and agrees that:

- (a) The Assignor will not assign, encumber, pledge or hypothecate the whole or any part of any Lease or Rents other than as permitted under the Loan Agreement.
- (b) The Assignor will observe and perform all of its obligations under the Leases.
- (c) None of the Rents has been or will be paid more than one month in advance (except, if so provided in the Lease, the payment of Rent for the last month of the term of any Lease).
- (d) Each of the Leases in full force and effect as of the date hereof is not in default, and no event or circumstance which with the passage of time or the giving of notice or both would constitute a default or event of default, exists under any such Lease.

- (e) There is no outstanding dispute under any Lease by any of the parties thereto and no tenant under any Lease is entitled to any offset or defence against the payment of Rent thereunder.

4. No Liability. Provided further and it is hereby expressly agreed that nothing herein contained shall have the effect of making the Assignee, its successors or assigns, responsible for the collection of the Rents or for the performance of any of the obligations or provisions under or in respect of the Leases to be observed and performed by the Assignor and that the Assignee shall not, by virtue of this Assignment or its receipt of the Rents, become or be deemed to be a mortgagee in possession and that the Assignee shall not be under any obligation to take any action or exercise any remedy in the collection or recovery of the Rents or to see to or enforce the performance of the obligations and liabilities of any person under or in respect of the Leases and that the Assignee shall be liable to account only for such monies as shall be actually come into its hands, less proper collection charges and that such monies may be applied on account of any indebtedness of the Assignor to the Assignee.

5. Rents. It is agreed that, if the Event of Default that gave rise to the Assignee exercising its rights under Section 2.2 and the collection of the Rents has been cured by the Assignor, then the Assignor may resume the collection of the Rent for so long as no other Event of Default shall occur and is continuing and the Assignee will provide the Assignor with details of all Rents received by it prior to such resumption.

6. Re-assignment. It is understood and agreed that none of the rights or remedies of the Assignee under any other security granted to it in respect of the Obligations shall be delayed or in any way prejudiced by this Assignment, and that only a full and complete release of the Charge, to which this Assignment is collateral security, shall operate as a full and complete release of all the Assignee's rights and interest hereunder and that after the Charge has been fully released and discharged, this instrument shall be void and of no further effect.

7. Excluded Collateral. Notwithstanding anything contained in this Assignment, the assignment contained herein shall not constitute an assignment of the right, title, interest and benefit of the Assignor in any of the Leases which require the consent of any third party to such assignment for which, if assigned, would give rise to a default or penalty (collectively, the "**Excluded Collateral**"). In each such case, the Assignor shall forthwith, upon request, use commercially reasonable efforts to obtain the necessary consent of any third party to the assignment contained herein in respect of any such Excluded Collateral and, upon such consent being obtained, the assignment contained herein shall apply to such Excluded Collateral without regard to this Section 7 and without the necessity of any further assurance to effect the assignment contained herein in respect thereto. Until such consent is obtained, the Assignor shall, to the extent that it may do so by law or under the terms of the Excluded Collateral and without giving rise to any default or penalty, hold all right, title, benefit and interest to be derived therefrom in trust for the Assignee as additional security, as if the assignment contained therein applied, and shall deliver up such right, title, benefit and interest to the Assignee forthwith upon demand under the Charge or upon any other security becoming enforceable under the Loan Agreement.

8. Continuing Collateral Security. This Assignment shall be held by the Assignee as general and continuing collateral security to the Assignee for the Obligations. This Assignment and the assignments granted hereby are in addition to and not in substitution for any other security now or hereafter held by

the Assignee and this Assignment will remain in full force and effect until re-assigned and discharged by the Assignee.

9. Miscellaneous.

9.1 Headings. The headings in this Assignment are inserted for convenience or reference only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Assignment or any provision of this Assignment.

9.2 Interpretation. For purposes of this Assignment, (a) the words “include”, “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein”, “hereof”, “hereby”, “hereto” and “hereunder” refer to this Assignment as a whole; (d) whenever the singular is used herein, the same includes the plural, and whenever the plural is used herein, the same includes the singular, where appropriate; (e) whenever the masculine is used herein, the same includes the feminine, and whenever the feminine is used herein, the same includes the masculine, where appropriate. Unless the context otherwise requires, references herein: (x) to sections and schedules mean the sections of and schedules attached to, this Assignment; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Assignment shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules referred to herein are construed with, and as an integral part of, this Assignment to the same extent as if they were set forth verbatim herein.

9.3 Notices. All notices and other communications provided for hereunder (each, a “**Notice**”) shall be in writing and be delivered by personal delivery, nationally recognized courier, certified or registered mail, facsimile or email of a PDF document to the addresses of parties set forth in the Loan Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). Notices shall be deemed to have been given (a) when received (if delivered by personal delivery, nationally recognized courier, certified or registered mail); (b) when sent (if delivered by facsimile), except that, if not given on a business day between 9:00 am and 5:00 p.m. local time where the recipient is located, then on the next business day for the recipient; (c) upon receipt by the sender of an acknowledgment from the recipient, such as by the return receipt requested function, return email or other written acknowledgment (if delivered by email of a PDF document), except that, if not given on a business day between 9:00 am and 5:00 p.m. local time where the recipient is located, then on the next business day for the recipient.

9.4 Conflicts. In the event of any conflict between any term, covenant, or condition of this Assignment and any term, covenant or condition of the Loan Agreement, the provisions of the Loan Agreement shall control and govern.

9.5 Cumulative Remedies. The rights and remedies under this Assignment are cumulative and are in addition to and not in substitution for any other rights and remedies available at law, or in equity or otherwise.

9.6 Successors and Assigns.

- (a) This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee, and their respective successors and permitted assigns.
- (b) The Assignor may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Assignee. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning party of any of its obligations hereunder.

9.7 Amendment and Modification. This Assignment may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. The agreement in writing shall then be binding on the parties thereto.

9.8 Waiver. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party will operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Assignment will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

9.9 Severability. If any term or provision of this Assignment is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Assignment or invalidate or render unenforceable such term or provision in any other jurisdiction.

9.10 Governing Law. All matters arising out of or relating to this Assignment are governed by and construed in accordance with the laws of the Province of Ontario, and the federal laws of Canada applicable in that Province.

9.11 Further Assurances. Each of the parties hereto shall, and shall cause their respective affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and each of the other Loan Documents and give effect to the transactions contemplated hereby and thereby.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Assignor has executed this general assignment of rents as of the date first above written.

TRINITY CENTRES CAMBRIDGE

By: 

Name: Narima Whitman

Title: Director and Secretary

I have the authority to bind the corporation.

SCHEDULE "A"

The Property:

Municipal Address: 15 Wellington Street, Cambridge, Ontario

Legal Description

PT LT 18 PL 455 CAMBRIDGE AS IN D31327; CAMBRIDGE
PIN: 03817-0091 (LT)

and

LT 3 E/S WELLINGTON ST & S/S BEVERLY ST PL 615 CAMBRIDGE; CAMBRIDGE
PIN: 03817-0022 (R)

GENERAL SECURITY AGREEMENT

THIS GENERAL SECURITY AGREEMENT made as of March 5, 2020.

BETWEEN:

TRINITY CENTRES CAMBRIDGE,

a non-share capital corporation formed under the laws of Ontario

(the “Debtor”)

- and -

COLDPOINT HOLDINGS LIMITED

(the “Secured Party”)

WHEREAS, the Secured Party, as lender, and the Debtor, as borrower, have entered into a loan agreement dated as of March 5, 2020 (as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time, the “**Loan Agreement**”) under which the Secured Party has made and will make certain credit facilities comprised of an Acquisition Loan and a Renovation Loan in the total aggregate amount of \$2,024,800.00 available to the Debtor (the “**Loans**”), on the security of, *inter alia*, a mortgage or charge (the “**Mortgage**”) of the lands and premises municipally known as 15 Wellington Street, Cambridge, Ontario and legally described as set out in Schedule “A” attached hereto (the “**Real Property**”); and

WHEREAS, this Agreement is given by the Debtor in favour of the Secured Party to secure the payment and performance of all of the Secured Obligations (defined below); and

WHEREAS, it is a condition to the obligations of the Secured Party to make the Loans under the Loan Agreement that the Debtor execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the Secured Party entering into the Loan Agreement and agreeing to make the Loans available to the Debtor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor agrees as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions. Capitalized terms not otherwise defined in this Agreement shall have the respective meanings assigned to such terms in the Loan Agreement. Unless otherwise defined herein or in the Loan Agreement, terms used herein that are defined in the PPSA shall have the meanings assigned to them in the PPSA. For purposes of this Agreement, the following terms shall have the following meanings:

“**Collateral**” has the meaning set forth in ARTICLE II.

“**Equity Interests**” means any and all shares, interests, participations or other equivalents (however designated) of shares in a corporation, any and all equivalent ownership (or profit) interests in a person (including, without limitation, partnership, membership or trust interests therein), securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such person, and any and all warrants, rights or options to purchase any of the foregoing, whether voting or nonvoting,

and whether or not such shares, warrants, options, rights or other interests are authorized or otherwise existing on any date of determination.

“**Event of Default**” means an Event of Default or Default as set forth in the Loan Agreement or the Mortgage, and a default under the provisions of this Agreement that has not been remedied within the applicable cure period, if any, provided in this Agreement.

“**Excluded Property**” has the meaning set forth in Section 2.03.

“**Loans**” shall have the meaning set forth in the first recital.

“**Loan Agreement**” has the meaning set forth in the first recital.

“**Loan Documents**” has the meaning set forth in ARTICLE III.

“**Mortgage**” shall have the meaning set forth in the first recital.

“**PPSA**” means the Personal Property Security Act as in effect from time to time in the Province of Ontario.

“**Proceeds**” means “proceeds” as such term is defined in section 1(1) of the PPSA and, in any event, shall include, without limitation, all dividends or other income from the Collateral, collections thereon or distributions with respect thereto.

“**Real Property**” has the meaning set forth in the first recital.

“**Receiver**” has the meaning set forth in Section Section 12.03(i).

“**Secured Obligations**” has the meaning set forth in ARTICLE III.

“**STA**” means the *Securities Transfer Act, 2006*, as in effect from time to time in the Province of Ontario.

Section 1.02 Interpretation. Unless otherwise specified herein, all references to Sections and Schedules herein are to Sections and Schedules of this Agreement.

ARTICLE II GRANT OF SECURITY INTEREST

Section 2.01 Grant of Security Interest. As security for the payment and performance of the Secured Obligations, the Debtor hereby grants, assigns, transfers, sets over, mortgages, charges, and pledges to the Secured Party, and hereby creates a continuing security interest in favour of the Secured Party in and to all of the Debtor's right, title and interest in and to the following that are situate at, used in connection with or related to the Real Property, whether now existing or hereafter from time to time arising or acquired (collectively, the “**Collateral**”):

- (a) all present and after-acquired property, assets and undertaking of the Debtor of every kind and nature whatsoever, including all Accounts, Goods (including Inventory, Equipment and motor vehicles, but excluding consumer goods), Intangibles, Chattel Paper, Documents of Title, Instruments, Securities and all other Investment Property, Money, and any other contract rights or rights to the payment of money;

- (b) all Proceeds and products of each of the foregoing, including any and all Proceeds of any insurance, indemnity, compensation for loss or damage, warranty or guarantee payable to the Debtor from time to time with respect to any of the foregoing;
- (c) all books and records relating to the foregoing, including in any form or medium;
- (d) all supporting obligations relating the foregoing; and
- (e) all additions, accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, but not including the last day of the term of any lease, verbal or written, or any agreement to lease, now held or hereafter acquired by the Debtor which is hereby excepted out of the security interests hereby created, but should the Secured Party need to enforce against the Collateral, the Debtor shall hold the last date in trust for the Secured Party and shall assign it to any person acquiring the term or that part of the term that is charged in the course of any enforcement or realization of the Collateral.

Section 2.02 Attachment of Security Interest. The Debtor acknowledges that value has been given, that the Debtor has rights in the Collateral, and that the parties have not agreed to postpone the time for attachment of any security interest in this Agreement. The Debtor acknowledges that any security interest in this Agreement shall attach to existing Collateral upon the execution of this Agreement and to each item of after-acquired Collateral at the time that the Debtor acquires rights in such after-acquired Collateral.

Section 2.03 Excluded Property. The grant of the security interest contained in Section 2.01 shall not extend to, and the term "Collateral" shall not include any right, title or interest in any permit, lease, license, contract, instrument, document or other agreement entered into by the Debtor: (i) that validly prohibits the creation of a security interest thereon or expressly requires the consent of any person other than the Debtor and its Affiliates which consent has not been obtained as a condition to the creation of such security interest; or (ii) to the extent that any law applicable thereto prohibits the creation of a security interest thereon, but only, in each case, to the extent, and for so long as, such prohibition or requirement for consent is not terminated or rendered unenforceable or otherwise deemed ineffective by the PPSA or any other applicable law (collectively, the "**Excluded Property**"); provided, however, "Excluded Property" shall not include any Proceeds, products, substitutions or replacements of any Excluded Property (unless such Proceeds, products, substitutions or replacements would themselves otherwise constitute Excluded Property) and provided further that, if any "Excluded Property" would have otherwise constituted Collateral, when such property shall cease to be "Excluded Property", such property shall be deemed at all times from and after the date hereof to constitute Collateral. In addition, to the extent that such property constitutes "Excluded Property" due to the failure of the Debtor to obtain consent as described herein, the Debtor shall use commercially reasonable efforts to obtain such consent, and, upon obtaining such consent, such property shall cease to constitute "Excluded Property", and, until such consent is obtained, the Debtor shall hold its interest in such Excluded Property in trust for the Secured Party.

ARTICLE III SECURED OBLIGATIONS

Section 3.01 Secured Obligations. The Collateral secures the payment and performance of all present and future obligations of the Debtor to the Secured Party from time to time, including without limitation,

all present and future obligations of the Debtor arising under the Loan Agreement, Mortgage, this Agreement, the security documents and any other material agreements entered into by the Debtor or any other loan party in connection with the Loans (collectively, the "**Loan Documents**"), whether primary, secondary, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, whether the indebtedness is reduced and thereafter increased or entirely extinguished and thereafter incurred again, whether incurred by the Debtor alone or with another or others and whether as a principal or surety, and with respect to the payment and discharge of: (i) the principal of and premium, if any, and interest on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise; and (ii) all other present and future obligations and liabilities including fees, costs, legal fees and disbursements, reimbursement obligations, contract causes of action, expenses and indemnities (all such obligations, covenants, duties, debts, liabilities, sums and expenses set forth in ARTICLE III being herein collectively called the "**Secured Obligations**").

ARTICLE IV PERFECTION OF SECURITY INTEREST AND FURTHER ASSURANCES

Section 4.01 Perfection. The Debtor shall, from time to time, as may be required by the Secured Party with respect to all Collateral, take all actions as may be requested by the Secured Party to perfect the security interest of the Secured Party in the Collateral at the sole expense of the Debtor.

Section 4.02 Intellectual Property. The Debtor hereby further authorizes the Secured Party to file with the Canadian Intellectual Property Office this Agreement and other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interests in Intangibles granted by the Debtor hereunder, without the signature of the Debtor where permitted by law.

Section 4.03 Chattel Paper, Documents of Title, Instruments. If the Debtor shall at any time hold or acquire any certificated securities, promissory notes, chattel paper, negotiable documents of title or warehouse receipts relating to the Collateral, the Debtor shall immediately endorse, assign and deliver possession of the same to the Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as the Secured Party may from time to time specify.

Section 4.04 Further Assurances The Debtor agrees that, at any time and from time to time, at the expense of the Debtor, the Debtor will promptly execute and deliver all further instruments and documents, obtain such agreements from third parties, and take all further action, that may be necessary or desirable, or that the Secured Party may reasonably request to create and maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted hereby (including, without limitation, providing the secured party with a fixed and specific mortgage) or to enable the Secured Party to exercise and enforce its rights and remedies hereunder or under any other Loan Document with respect to any Collateral.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Section 5.01 Representations and Warranties. The Debtor represents and warrants as follows:

- (a) **Location of Collateral and Places of Business.** The Debtor's place of business and the location of the Collateral, including all books and records in respect of Accounts, are set forth in Schedule "B" hereto.

- (b) **Ownership and Title.** The Debtor hereby represents and warrants to the Secured Party that it is the sole, direct, legal and beneficial owner of, and has good marketable title to all existing Collateral and shall be the sole, direct, legal and beneficial owner of, and have good marketable title to each item of after-acquired Collateral free and clear of any mortgages, charges, hypothecs, pledges, trusts, liens, security interests and other claims except for the security interests created by this Agreement and other encumbrances permitted by the Loan Agreement.
- (c) **Status.** The Debtor has full power, capacity, authority and legal right to borrow the Loans, grant a security interest in the Collateral, execute and deliver this Agreement and perform its obligations under this Agreement.
- (d) **Binding Obligation.** Each of this Agreement and the other Loan Documents has been duly authorized, executed and delivered by the Debtor and constitutes a legal, valid and binding obligation of the Debtor enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, arrangement, or other similar laws affecting creditors' rights generally and subject to equitable principles (regardless of whether enforcement is sought in equity or at law).
- (e) **No Governmental or Regulatory Approvals.** No authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the borrowing of the Loans and the pledge by the Debtor of the Collateral under this Agreement or for the execution and delivery of the other Loan Documents by the Debtor or the performance by the Debtor of its obligations thereunder.
- (f) **No Violation of Laws, Constatng Documents, Agreements.** The execution and delivery of the Loan Documents by the Debtor and the performance by the Debtor of its obligations thereunder, will not violate any provision of any applicable law or regulation or any order, judgment, writ, award or decree of any court, arbitrator or governmental authority, domestic or foreign, applicable to the Debtor or any of its property, or the constating or governing documents of the Debtor or any agreement or instrument to which the Debtor is party or by which it or its property is bound.
- (g) **Perfection by Control.** The Debtor has taken all action required on its part for control to have been obtained by the Secured Party over all Collateral with respect to which such control may be obtained pursuant to the PPSA and the STA. No person other than the Secured Party has control or possession of all or any part of the Collateral.

ARTICLE VI VOTING, DISTRIBUTIONS, CONTROL AGREEMENT AND RECEIVABLES

Section 6.01 Voting. Unless an Event of Default shall have occurred and be continuing, the Debtor may, to the extent the Debtor has such right as a holder of the Collateral consisting of securities, other Equity Interests or indebtedness owed by any obligor, vote and give consents, ratifications and waivers with respect thereto, except to the extent that, in the Secured Party's reasonable judgment, any such vote, consent, ratification or waiver would detract from the value thereof as Collateral or which would be inconsistent with or result in any violation of any provision of the Loan Agreement or this Agreement.

Section 6.02 Distributions. The Debtor may, unless an Event of Default shall have occurred and be continuing, receive and retain all dividends and other distributions with respect to the Collateral consisting of securities, other Equity Interests or indebtedness owed by any obligor.

Section 6.03 Control Agreement. Where Investment Property is held in an account of a securities intermediary, the Debtor shall: (i) enter into, and use commercially reasonable efforts to cause any securities intermediary for any securities accounts or entitlements forming part of the Collateral to enter into, a securities account control agreement between the Secured Party, the Debtor and said securities intermediary in a form and substance acceptable to the Secured Party; and (ii) enter into, and use commercially reasonable efforts to cause any issuer of uncertificated securities forming part of the Collateral to enter into, a securities account control agreement between the Secured Party, the Debtor and said securities intermediary, in a form and substance acceptable to the Secured Party.

Section 6.04 Receivables. If any Event of Default shall have occurred and be continuing, the Secured Party may, or at the request and option of the Secured Party, the Debtor shall: (i) notify account debtors of the Secured Party's security interests in any account, chattel paper, intangible, instrument or other Collateral; and (ii) direct that payment thereof is to be made directly to the Secured Party.

ARTICLE VII COVENANTS

Section 7.01 Covenants. The Debtor covenants as follows:

- (a) **Consent re: Change of Legal Name and Place of Business.** The Debtor will not, without the prior written consent of the Secured Party, change its legal name, jurisdiction of incorporation, corporate structure, province or territory in which its registered office, chief executive office or its principal place of business, is located. The Debtor will, prior to any change described in the preceding sentence, take all actions requested by the Secured Party to maintain the perfection and priority of the Secured Party's security interest in the Collateral.
- (b) **Consent re: Change of Location of Collateral.** The Collateral, to the extent not delivered to the Secured Party under ARTICLE IV, will be kept at those locations listed in Schedule "B" and, except for Inventory sold or leased in the ordinary course of business, the Debtor will not remove the Collateral from such locations without obtaining the Secured Party's prior written consent. The Debtor will, before any change described in the preceding sentence, take all actions required by the Secured Party to maintain the perfection and priority of the Secured Party's security interest in the Collateral.
- (c) **Dealing with Collateral: No Sale or Encumbrances.** The Debtor will not sell, dispose of, lease, assign or otherwise transfer any of the Collateral except as expressly provided for in the Loan Agreement, in the ordinary course of business, or with the prior written consent of the Secured Party. The Debtor will not grant, create, permit or suffer to exist any mortgage, hypothec, pledge, lien, security interest, option, right of first offer, right of first refusal, encumbrance, statutory lien or trust (including any conditional sale or other title retention agreement or finance lease) or other restriction or limitation of any nature whatsoever on the Collateral except as expressly provided for in the Loan Agreement or with the prior written consent of the Secured Party.

- (d) **Maintenance and Protection of Collateral.** The Debtor will keep the Collateral in good order, condition and repair so as to protect and preserve the Collateral. The Debtor will not use the Collateral in violation of this Agreement, or any other agreement relating to the Collateral or any policy of insurance thereon, or any applicable law. The Debtor will keep all licences, permits, agreements, registrations and applications relating to intellectual property used by Debtor in good standing. The Debtor shall register all existing and future trademarks, patents, copyrights and industrial designs. The Debtor shall, at its own cost and expense, defend title to the Collateral and the security interests of the Secured Party therein against the claim or demand of any person claiming against or through the Debtor and shall maintain and preserve such perfected security interests for so long as this Agreement shall remain in effect.
- (e) **Performance of Obligations.** The Debtor will pay promptly when due all taxes, assessments, governmental charges, and levies upon the Collateral or incurred in connection with the use or operation of the Collateral or incurred in connection with this Agreement. The Debtor shall perform all of its obligations under material agreements, leases, licenses, arrangements to obtain and preserve its rights, powers, licences, privileges and goodwill thereunder and comply with all applicable laws, by-laws, rules and regulations so as to preserve and protect the Collateral and the Debtor's business.
- (f) **Access to Collateral, Inspection.** The Debtor will permit the Secured Party, or its representatives, to inspect the Collateral from time to time and to examine and take extracts of its books and records (electronic or hard copy), at any reasonable time and on reasonable notice, wherever located. The Debtor shall, upon request by the Secured Party, provide the Secured Party with any information concerning the Collateral, the Debtor and its business, as the Secured Party may reasonably request, including access to the Debtor's senior executives, accountants and auditors to discuss any information concerning the Collateral.
- (g) **Notification.** The Debtor shall notify the Secured Party within five business days of: (i) any change in the information contained in Schedule "B" hereto; (ii) the details of any material acquisition of Collateral; (iii) the details of any material litigation in connection with the Debtor, the Collateral or the Debtor's business; (iv) any loss or damage to the Collateral or the value of the Collateral; and (v) any default by any Account Debtor in the payment or performance of its obligations.
- (h) **Insurance.** The Debtor shall insure the Collateral against loss or damage by fire and such other risks and hazards, in such amounts and upon such other terms as set out in the Loan Agreement or as the Secured Party may from time to time require. Any insurance proceeds received by the Secured Party may, at the option of the Secured Party, be applied against the Secured Obligations or released to the Debtor without prejudice to any rights or remedies of the Secured Party hereunder.

ARTICLE VIII

SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND COVENANTS

Section 8.01 Survival of Representations and Warranties and Covenants. All representations, warranties and covenants made by the Debtor shall survive the execution and delivery of this Agreement and remain in full force and effect until the payment in full of the Secured Obligations.

**ARTICLE IX
SECURED PARTY POWER OF ATTORNEY**

Section 9.01 Secured Party Power of Attorney. The Debtor hereby constitutes and appoints the Secured Party and any officer or employee of the Secured Party to be the Debtor's true and lawful attorney in accordance with applicable legislation with full power of substitution, with full authority in the place and stead of the Debtor and in the name of the Debtor or otherwise, from time to time in the Secured Party's discretion to take any action and to execute any instrument which the Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement (but the Secured Party shall not be obligated to and shall have no liability to the Debtor or any third party for failure to do so or take action). This appointment, being coupled with an interest, shall be irrevocable until the discharge of the security interests created by this Agreement. The Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof.

**ARTICLE X
SECURED PARTY MAY PERFORM**

Section 10.01 Secured Party May Perform. If the Debtor fails to perform any obligation contained in this Agreement, the Secured Party may itself perform, or cause performance of, such obligation, and the costs and expenses of the Secured Party incurred in connection therewith shall be payable by the Debtor; *provided that* the Secured Party shall not be required to perform or discharge any obligation of the Debtor and the performance by the Secured Party shall not waive the rights of the Secured Party to enforce this Agreement.

**ARTICLE XI
SET-OFF**

Section 11.01 Set-Off. The Secured Party may, without notice to the Debtor or any other person, any notice being expressly waived, set-off and apply all amounts standing to or for the credit of the Debtor from the Secured Party or any of the Secured Party's affiliates, in any currency, against and on account of all or any part of the Secured Obligations, all as the Secured Party may see fit (in its sole discretion), whether or not the Secured Obligations are due and payable. The Secured Party's records are proof of such recording absent manifest error. When applying a deposit or other obligation in a different currency than the Secured Obligations to the Secured Obligations, the Secured Party will convert the deposit or other obligation to the currency of the Secured Obligations using the rate of exchange for the conversion of such currency as determined by the Secured Party.

**ARTICLE XII
REMEDIES UPON DEFAULT**

Section 12.01 Right to Accelerate Payment. Upon the occurrence of an Event of Default that is continuing, the Secured Party may, by notice, declare any or all of the Secured Obligations to be immediately due and payable, whereupon, all of the Secured Obligations shall become and be immediately due and payable without presentment, demand, protest or further notice, all of which are hereby expressly waived by the Debtor.

Section 12.02 Enforcement of Security Interest. Upon the occurrence of an Event of Default that is continuing, the Secured Party may proceed to realize upon the collateral and immediately enforce its rights.

Section 12.03 Remedies upon Default. Upon the occurrence of an Event of Default that is continuing, the Secured Party may exercise, without any other notice to or demand upon the Debtor, in addition to the other rights and remedies provided herein or in any other Loan Document or otherwise available to it, the following rights and remedies (which rights and remedies may be exercised independently or in combination):

- (a) the Secured Party may assert all rights and remedies of a secured party under the PPSA or other applicable law;
- (b) the Secured Party may take such steps as it considers desirable to maintain, preserve or protect the Collateral or its value;
- (c) the Secured Party may take possession of the Collateral by requiring the Debtor to assemble the Collateral or any part thereof and deliver the Collateral, or make the Collateral available, to the Secured Party at a place and time to be designated by the Secured Party;
- (d) the Secured Party may take possession of the Collateral by carrying on all or any part of the business of the Debtor, and may to the exclusion of all others, including the Debtor, enter upon, occupy and use any of the premises; buildings, plant and undertaking owned, occupied or used by the Debtor and may use any of the tools, machinery, equipment and intangibles of the Debtor for such time as the Secured Party sees fit, free of charge and without liability, in order to carry on the business of the Debtor or to manufacture or complete the manufacture of Inventory and to pack and ship finished products.
- (e) the Secured Party may enter upon and occupy any land and premises owned, leased or occupied by the Debtor where the Collateral or any part thereof is assembled or located in order to effectuate its rights and remedies hereunder or under law, without obligation whatsoever to the Debtor;
- (f) the Secured Party may borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof, or to carry on the business, and may further charge the Collateral in priority to the security constituted by this Security Agreement;
- (g) the Secured Party may exercise and enforce all rights and remedies of the Debtor with respect to the Collateral including collecting or compromising all or any of the Debtor's Accounts;
- (h) the Secured Party may sell, lease, license, or otherwise dispose of all or any part of the Collateral by private sale or public sale or otherwise, and upon such other terms and conditions (including as to credit, upset or reserve bid or price) as the Secured Party may deem commercially reasonable;
- (i) the Secured Party may appoint, by instrument in writing, any person or persons (whether an officer or employee of the Secured Party or not) to be a receiver, manager, interim receiver, or receiver and manager (collectively, "**Receiver**"), of the Collateral or any part

of the Collateral and remove or replace any person so appointed. Any receiver so appointed shall have, in addition to any other powers afforded by the law, the same powers and authorities afforded to the Secured Party under this ARTICLE XII;

- (j) the Secured Party may apply to a court of competent jurisdiction for the appointment of a Receiver of the Collateral or any part of the Collateral. Any receiver so appointed shall have, in addition to any other powers afforded by the law, the same powers and authorities afforded to the Secured Party under this ARTICLE XII; and
- (k) all rights of the Debtor to: (i) exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 6.01; and (ii) receive the dividends and other distributions which it would otherwise be entitled to receive and retain pursuant to Section 6.02, shall immediately cease, and all such rights shall thereupon become vested in the Secured Party, which shall have the sole right to exercise such voting and other consensual rights and receive and hold such dividends and other distributions as Collateral.

Section 12.04 Receiver Agent of Debtor. In exercising any powers any such receiver so appointed shall act as agent of the Debtor and not the Secured Party and the Secured Party shall not in any way be responsible for any of the actions of the Receiver, its employees, agents and contractors. The Secured Party may from time to time remove and appoint replacements for, any Receiver, and appoint another or others in their stead from time to time.

Section 12.05 Distribution of Proceeds. Any cash held by the Secured Party as Collateral and all cash Proceeds received by the Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied in whole or in part by the Secured Party to the payment of expenses incurred by the Secured Party in connection with the foregoing or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Party hereunder, including reasonable legal and Receivers' fees, and the balance of such proceeds shall be applied or set-off against all or any part of the Secured Obligations in such order as the Secured Party shall elect. Any surplus of such cash or cash Proceeds held by the Secured Party and remaining after payment in full of all the Secured Obligations shall be paid over to the Debtor or to whomsoever may be lawfully entitled to receive such surplus. The Debtor shall remain liable for any deficiency if such cash and the cash Proceeds of any sale or other realization of the Collateral are insufficient to pay the Secured Obligations and the fees and other charges of any solicitor employed by the Secured Party to collect such deficiency.

Section 12.06 Debtor Pays Expenses. The Debtor agrees to pay all expenses incurred by the Secured Party or any Receiver in the preparation, perfection and enforcement of this Agreement, whether directly incurred or for services rendered including legal and auditor's fees and expenses and remuneration of any Receiver. All such expenses incurred shall be added to the Secured Obligations, bear interest at the highest interest rate in the Loan Agreement and be payable upon demand, unless otherwise set out in this Agreement.

Section 12.07 Indemnity. The Debtor hereby indemnifies and hold harmless the Secured Party from and against, any and all claims, damages, losses, liabilities and related expenses (including the fees, charges and disbursements of any counsel), incurred by or asserted against the Secured Party by anyone (including the Debtor), arising out of, in connection with, or by reason of the Collateral, an occurrence of an Event of Default or the preparation, perfection and enforcement of this Agreement by the Debtor or any Receiver, except that this indemnity shall not be available to the extent that such claims, damages,

losses, liabilities or related expenses are determined by a court of competent jurisdiction to have resulted from the gross negligence or wilful misconduct of the Secured Party or the Receiver.

ARTICLE XIII MISCELLANEOUS

Section 13.01 No Waiver and Cumulative Remedies. The Secured Party shall not by any act, delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Event of Default. All rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies provided by law.

Section 13.02 Amendments. None of the terms or provisions of this Agreement may be amended, modified, supplemented, terminated or waived, and no consent to any departure by the Debtor therefrom shall be effective unless the same shall be in writing and signed by the Secured Party and the Debtor, and then such amendment, modification, supplement, waiver or consent shall be effective only in the specific instance and for the specific purpose for which made or given.

Section 13.03 Notices. All notices, consents, claims, demands, waivers and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth in the Loan Agreement and shall be given in the manner and become effective as set forth in the Loan Agreement.

Section 13.04 Continuing Security Interest; Further Actions. This Agreement shall create a general and continuing security interest in the Collateral and shall (a) subject to Section 13.06, remain in full force and effect until payment and performance in full of the Secured Obligations, (b) be binding upon the Debtor, its successors and permitted assigns, and (c) enure to the benefit of the Secured Party and its successors, transferees and assigns; *provided that* the Debtor may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Secured Party.

Section 13.05 Assignment. The Secured Party may assign or transfer any of its rights under this Agreement without the consent of the Debtor. The Debtor may not assign its obligations under this Agreement without the prior written consent of the Secured Party.

Section 13.06 Termination; Release. On the date on which all Secured Obligations have been paid and performed in full (as determined by the Secured Party in its sole discretion), the Secured Party will, at the request and sole expense of the Debtor (a) duly assign, transfer and deliver to or at the direction of the Debtor (without recourse and without any representation or warranty) such of the Collateral as may then remain in the possession of the Secured Party, together with any monies at the time held by the Secured Party hereunder, and (b) execute and deliver to the Debtor a proper instrument or instruments acknowledging the satisfaction and termination of this Agreement.

Section 13.07 Acknowledgement. The Debtor acknowledges receipt of a fully executed copy of this Agreement.

Section 13.08 Amalgamation. The Debtor acknowledges that, if it amalgamates with another person, the term Debtor when used in this Agreement, shall apply to each of the amalgamating corporations and to the amalgamated corporation, such that the security interests created hereby shall extend to the Collateral in which any amalgamating corporation has any rights at the time of the amalgamation and to any collateral in which the amalgamated corporation thereafter has any rights to secure the Secured Obligations of each of the amalgamating corporations and the amalgamated corporation to the Secured

Party at the time of the amalgamation and any Secured Obligations of the amalgamated corporation to the Secured Party thereafter arising.

Section 13.09 Governing Law. All matters arising out of or relating to this Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.

Section 13.10 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 13.11 Conflict with Loan Agreement. To the extent of any conflict or inconsistency between the terms of this Agreement and the terms of the Loan Agreement, the terms of the Loan Agreement shall govern to the extent necessary to remove the conflict or inconsistency.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Debtor has executed this Agreement as of the date first above written.

TRINITY CENTRES CAMBRIDGE, as Debtor

By 

Name: Narima Whitman

Title: Director and Secretary

I have authority to bind the Debtor.

SCHEDULE A

The Property:

Municipal Address: 15 Wellington Street, Cambridge, Ontario

Legal Description

PT LT 18 PL 455 CAMBRIDGE AS IN D31327; CAMBRIDGE
PIN: 03817-0091 (LT)

and

LT 3 E/S WELLINGTON ST & S/S BEVERLY ST PL 615 CAMBRIDGE; CAMBRIDGE
PIN: 03817-0022 (R)

SCHEDULE B

1. The Real Property
2. Debtor's offices: 1439 Saint-Catherine Street, West, Montreal, Quebec

EXHIBIT “C”

This is Exhibit "C" referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely.*

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

A Commissioner for taking affidavits



Ontario ServiceOntario

ABSTRACT INDEX (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #58

03817-0022 (R)

PAGE 1 OF 1
PREPARED FOR BOBBIE JO BRINKMAN
ON 2021/03/25 AT 11:18:23

teranet e/press

PROPERTY DESCRIPTION: LT 3 E/S WELLINGTON ST & S/S BEVERLY ST PL 615 CAMBRIDGE; CAMBRIDGE

PROPERTY REMARKS:

ESTATE/QUALIFIER:

RECENTLY:
RE-ENTRY FROM 03817-0120

PIN CREATION DATE:
2003/09/15

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/09/12 **						
<i>DATE OF EARLIEST REGISTRATION LOADED: 2020/03/02</i>						
R1584863	2020/03/02	DEPOSIT		FIRST UNITED CHURCH		C
R1584864	2020/03/02	TRANSFER	\$2	FIRST UNITED CHURCH	FIRST UNITED CHURCH	C
R1584871	2020/03/05	TRANSFER	\$1,531,000	FIRST UNITED CHURCH	TRINITY CENTRES CAMBRIDGE	C
R1584872	2020/03/05	CHARGE	\$2,500,000	TRINITY CENTRES CAMBRIDGE	COLDPOINT HOLDINGS LIMITED	C
58ERR65	2020/03/05	TRANSFER		*** COMPLETELY DELETED *** FIRST UNITED CHURCH	TRINITY CENTRES CAMBRIDGE	
REMARKS: DOCUMENT R1584872 - ERROR ENTRY, CANCELLED BY WILKINSON, TAMMY ON 2020/03/05						
R1584873	2020/03/05	ASSIGNMENT GENERAL		TRINITY CENTRES CAMBRIDGE	COLDPOINT HOLDINGS LIMITED	C
REMARKS: RENTS-R1584872						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



Ontario ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #58

03817-0091 (LT)

PAGE 1 OF 1
PREPARED FOR BOBBIE JO BRINKMAN
ON 2021/03/25 AT 11:18:28

teranet express

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PT LT 18 PL 455 CAMBRIDGE AS IN D31327; CAMBRIDGE

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED
OWNERS' NAMES
TRINITY CENTRES CAMBRIDGE

RECENTLY:
RE-ENTRY FROM 03817-0187
CAPACITY SHARE

FIN CREATION DATE:
2003/09/15

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/09/12 **					
**SUBJECT,	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:					
**	SUBSECTION 44 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70 (2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO	LAND TITLES: 2003/09/15 **					
D31327	1928/08/02	TRANSFER		*** DELETED AGAINST THIS PROPERTY ***	TRUSTEES FOR THE FIRST PRESBYTERIAN CHURCH OF CANADA	
WR1246375	2020/03/03	APL CH NAME OWNER		*** COMPLETELY DELETED ***	FIRST UNITED CHURCH	
WR1247053	2020/03/05	TRANS RLIIGIOUS ORG	\$1,531,000	TRUSTEES FOR THE FIRST PRESBYTERIAN CHURCH OF CANADA	TRINITY CENTRES CAMBRIDGE	C
	REMARKS: PLANNING ACT STATEMENTS.					
WR1247054	2020/03/05	CHARGE	\$2,500,000	FIRST UNITED CHURCH	COLDPOINT HOLDINGS LIMITED	C
WR1247059	2020/03/05	NO ASSGN RENT GEN		TRINITY CENTRES CAMBRIDGE	COLDPOINT HOLDINGS LIMITED	C
	REMARKS: WR1247054					

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

EXHIBIT “D”

This is Exhibit "D" referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely.*

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal stroke at the bottom.

A Commissioner for taking affidavits

RUN NUMBER : 258
RUN DATE : 2021/09/15
ID : 20210915182530.80

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(9381)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : TRINITY CENTRES CAMBRIDGE

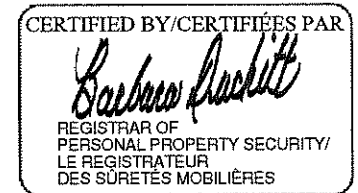
FILE CURRENCY : 14SEP 2021

ENQUIRY NUMBER 20210915182530.80 CONTAINS 4 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

ONCORP - THORNTON GROU FINNIGAN LLP
3200-100 WELLINGTON STREET WEST
TORONTO ON M5K 1K7

CONTINUED... 2



(crj5 06/2019)

RUN NUMBER : 258
RUN DATE : 2021/09/15
ID : 20210915182530.80

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 2
(9382)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : TRINITY CENTRES CAMBRIDGE
FILE CURRENCY : 14SEP 2021

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER : 760509414

01 CAUTION FILING PAGE NO. OF PAGES TOTAL MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD
001 002 20200302 0945 1862 9628 P PPSA 12

02 DEBTOR NAME : TRINITY CENTRES CAMBRIDGE
03 BUSINESS NAME : TRINITY CENTRES CAMBRIDGE
04 DATE OF BIRTH : ADDRESS : 1439 RUE SAINTE-CATHERINE OUEST MONTREAL ONTARIO CORPORATION NO. : PQ H3G 1S6

05 DEBTOR NAME :
06 BUSINESS NAME :
07 ADDRESS :
08 DATE OF BIRTH : FIRST GIVEN NAME : INITIAL : SURNAME :
09 ONTARIO CORPORATION NO. :

08 SECURED PARTY / LIEN CLAIMANT : COLDPOINT HOLDINGS LIMITED
09 ADDRESS : 5068 WHITELAW ROAD, UNIT 1 GUELPH ON N1H 6J3

10 COLLATERAL CLASSIFICATION :
CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE AMOUNT DATE OF MATURITY OR NO. FIXED MATURITY DATE
X X X X X

11 MOTOR VEHICLE :
12 YEAR MAKE : MODEL : VIN :

13 GENERAL COLLATERAL DESCRIPTION : ALL PRESENT AND FUTURE PERSONAL PROPERTY LOCATED AT, SITUATED ON, OR USED IN CONNECTION WITH THE REAL PROPERTY MUNICIPALLY KNOWN AS 15 WELLINGTON STREET, CAMBRIDGE AND LEGALLY DESCRIBED AS PIN

16 REGISTERING AGENT : WILDEBOER DELLELCE LLP (PA-M)
17 ADDRESS : 365 BAY STREET, SUITE 800 TORONTO ON M5H 2V1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES
(crj1fu 06/2019)



RUN NUMBER : 258
RUN DATE : 2021/09/15
ID : 20210915182530.80

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(9383)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : TRINITY CENTRES CAMBRIDGE
FILE CURRENCY : 14SEP 2021

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
760509414

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO OF PAGES SCHEDULE NUMBER UNDER PERIOD
002 002 20200302 0945 1862 9628

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME ONTARIO CORPORATION NO.

04 ADDRESS

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY /
LIEN CLAIMANT

09 ADDRESS

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL 03817-0097(LT) AND PIN 03817-0022(R).

14 COLLATERAL
15 DESCRIPTION

16 REGISTERING
17 AGENT ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 4

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)



RUN NUMBER : 258
RUN DATE : 2021/09/15
ID : 20210915182530.80

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

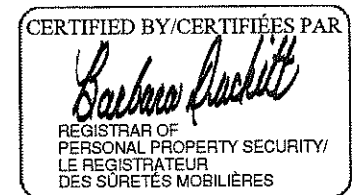
REPORT : PSSR060
PAGE : 4
(9384)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : TRINITY CENTRES CAMBRIDGE
FILE CURRENCY : 14SEP 2021

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
760509414	20200302	0945	1862	9628

1 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crj5 06/2019)

EXHIBIT “E”

This is Exhibit "E" referred to in the Affidavit of David Mr. Wood sworn before remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely.*

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

A Commissioner for taking affidavits



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued
Délivré par voie électronique : 23-Feb-2021
Kitchener

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

- and -

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION,
TRINITY CENTRES CAMBRIDGE, MILLER THOMSON LLP and
COLDPOINT HOLDINGS LTD.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: **Superior Court of Justice
Waterloo Region Courthouse**
85 Frederick Street
Kitchener, ON
N2H 0A7

TO: GRAHAM SINGH
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AND TO: PETER ELGERSMA
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AND TO: COLDPOINT HOLDINGS LTD.
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CLAIM

1. The Plaintiff claims:

- (a) a declaration pursuant to section 253(1) of the *Canada Not-for-profit Corporations Act* (the “CNCA”) that the actions and/or omissions of the Defendant, Trinity Centres Cambridge (the “Corporation”), and the conduct of the activities and affairs of the Corporation, and/or or the exercise of the powers of the directors or officers of the Corporation pleaded herein are oppressive and unfairly prejudicial to, or unfairly disregards the interests of, the plaintiff;
- (b) an order appointing a receiver and manager (the “Receiver”) of all the assets, property and undertaking of the Corporation, without security, pursuant to section 253(3)(b) of CNCA and section 101 of the *Courts of Justice Act*;
- (c) in the alternative to (b), an injunction restraining the defendants, Trinity Centres Foundation (“TCF”), Graham Singh (“Singh”) and Peter Elgersma (“Elgersma”), their servants and agents, from disposing of or otherwise dealing with the assets, property and undertaking of the Corporation including any account maintained by the Corporation at the Royal Bank of Canada or elsewhere;
- (d) an order requiring the Receiver to account to the Court;
- (e) an order setting aside or annulling section 4.05 of the by-law of the Corporation for invalidity under the CNCA, including sections 128(3) and 253(3)(h) thereof;

- (f) an order setting aside or annulling the unanimous member agreement between the Corporation, the plaintiff and the defendant, TCF, pursuant to sections 170(8) and 253(3)(c) and (h) of the CNCA;
- (g) an order setting aside or annulling the lease and option agreement made as of March 5, 2020 between the Corporation as landlord and the plaintiff as tenant, for fraud and pursuant to section 253(3)(h) of the CNCA;
- (h) an order setting aside or annulling the property services agreement executed on February 9, 2021 between the Corporation and the defendant, TCF, pursuant to sections 141(1) and 253(3)(h) of the CNCA;
- (i) an order removing Elgersma as a director of the Corporation, pursuant to section 253(3)(e) of the CNCA;
- (j) an order granting the plaintiff leave, under sections 251 and 252 of the CNCA, to bring a derivative action on behalf of the Corporation against the defendants, TCF, Singh and Elgersma to disgorge fees paid by the Corporation to TCF and against the defendant Miller Thomson LLP (“**Miller Thomson**”) to disgorge fees paid by the Corporation to Miller Thomson;
- (k) an order that any recovery of fees pursuant to the derivative action brought by the plaintiff on behalf of the Corporation be paid directly to the plaintiff to the extent of the sum of \$506,200 plus interest thereon, absolutely free and clear of any security interest in favour of the defendant, Coldpoint Holdings Ltd.;
- (l) liquidation of the Corporation pursuant to sections 24(1) and 253(3)(l) of the CNCA;

- (m) damages in the amount of \$506,200 jointly and severally against the defendants, TCF, Singh, Elgersma and Miller Thomson for losses suffered as a result of breach of duty (contractual, tortious, equitable, fiduciary, statutory, regulatory and/or other duties) including as a director, officer or agent, misrepresentation, fraud, oppression and unjust enrichment;
- (n) an order for restitution, rescission and/or such other equitable remedy for the breaches of duties and other tortious conduct referred to in subparagraph 1(m) above;
- (o) punitive damages in the amount of \$500,000 against the defendants, TCF and Singh, jointly and severally;
- (p) punitive damages in the amount of \$250,000 against the defendant, Miller Thomson;
- (q) punitive damages in the amount of \$10,000 against the defendant, Elgersma;
- (r) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act* (Ontario);
- (s) the costs of this action on a substantial indemnity basis;
- (t) such further and other relief as this Honourable Court may deem just.

Parties

2. The plaintiff, River City Christian Reformed Church (“**RCC**”) is a religious organization incorporated under the laws of Ontario and carries on its activities from lands and premises having the civic address of 15 Wellington Street, Cambridge (the “**Property**”).

3. The defendant Corporation, Trinity Centres Cambridge, is a corporation incorporated under the CNCA. The Corporation owns the Property. Pursuant to By-Law No. 2019-1 of the Corporation, its members are RCC and the defendant TCF.
4. The defendant, TCF, is a corporation incorporated under the CNCA. TCF purports to provide less than market rate spaces to Canada's charitable sector through adaptive re-use of church buildings.
5. The defendant, the Reverend Singh, is:
 - (a) the executive director and a member of the board of directors of TCF; and
 - (b) the chair and chief executive officer (collectively, the "CEO") of the Corporation.
6. The defendant, Elgersma, is a director and officer of the Corporation.
7. The defendant, Miller Thomson, is a limited liability partnership carrying on the practice of law in Ontario and elsewhere. Miller Thomson acted as counsel for the Corporation and its members, RCC and TCF.
8. The defendant, Coldpoint Holdings Ltd. ("Coldpoint"), is a corporation that made a secured loan to the Corporation to finance, in part, the purchase and renovation of the Property.

Background to the Plaintiff and the Purchase of the Property

9. RCC was incorporated in Ontario in 2018. Before incorporation, its predecessor operated as an unincorporated religious organization continuously since January 29, 2003. This organization was founded by the Reverend Darrell Bierman ("Bierman") and his wife, Barbara Bierman, and has operated continuously in Cambridge Ontario.

10. RCC has 500 people who look to it as their church. On a typical Sunday morning before COVID-19 was declared a pandemic, between 200 to 300 people attended the church's service. Approximately 75 families regularly make financial contributions to the church by tithes and offerings, enabling the church to be self-sustaining since 2007.
11. RCC was a portable church until 2020. This means that it leased space for formal gatherings of its congregation from Saint Benedict's Catholic Secondary School from 2003-2006, Galt Collegiate Institute from 2006-2007, Clemens Mills Public School from 2007-2009 and Galaxy Cinemas from 2009 to 2020.
12. RCC and its congregants longed for a permanent home. The Property at issue was a United Church that was owned by the trustees of the First United Church ("**First United Church**") in Cambridge. It is the oldest church building in Cambridge, but the United Church had ceased using the Property for formal gatherings of its congregation in 2017. When the Property became available, RCC made several attempts to purchase it.

TCF and Initial Plans to Acquire the Property

13. On or about May 29, 2019, TCF entered into an agreement to purchase the Property from the First United Church.
14. On or about July 22, 2019, TCF sent a letter to RCC proposing to assign TCF's agreement to purchase the Property to RCC. The letter was from Singh, the CEO of TCF.

15. The proposal required a \$100,000 deposit and included a proposed mortgage loan from Wood Development Group¹ (which is an affiliate of Coldpoint Holdings Ltd.) for the difference between the purchase price and what RCC would have available to pay for the purchase. The letter further proposed that TCF would provide property management services under a written agreement for a minimum duration of five years. The closing of the agreement to purchase the Property was to be on September 15, 2019. TCF's fee would be based on "a charge of 20% of revenue, including an allocation of nominal rent from" RCC. The letter did not contemplate that the Corporation would be created or interposed as owner of the Property or that TCF would acquire, directly or indirectly, an equity interest in the Property.
16. Soon, however, Singh proposed another structure in which TCF and RCC would form a new corporation, the purpose of which would be to purchase the Property and lease it to RCC under a lease with an option to purchase. TCF would still have a property management agreement. Singh attributed this restructuring of the acquisition to the defendant, Miller Thomson, who would act for the joint corporation and both its members.
17. On or about September 19, 2019, Bierman met Singh, David Tang ("Tang"), a lawyer at Miller Thomson, and Coldpoint's David Wood ("Wood") at Miller Thomson's Guelph office to discuss the proposed partnership between RCC and TCF, the purchase from First United Church and its financing by Coldpoint. Wood wanted to assess Bierman personally. Tang assured Bierman that he had worked on "many partnership agreements" like the one that the parties were contemplating and that it was "really quite standard" and "not all that complicated".

¹ Wood Development rather than Coldpoint is mentioned in the July 22, 2019 letter from TCF.

18. Bierman took from this meeting that Miller Thomson would be acting for both partners, RCC and TCF, and the partnership.

Incorporation and Organization of the Joint Corporation

19. The Corporation was incorporated under the CNCA on October 18, 2019. Singh was the sole incorporator.

20. The Corporation was incorporated for the sole purpose of acquiring the Property, which would be the new home of RCC and its congregants, and leasing it to RCC under a lease with an option to purchase.

21. According to its certificate and articles of incorporation (the “**Articles**”), the Corporation’s stated purpose was “To advance the Christian faith by holding title to one or more properties and providing facilities for use by other registered charities, including churches and religious organizations” and to carry on ancillary activities.

22. The Articles also provided that:

- (a) there is only one class of membership in the Corporation;
- (b) the “Corporation shall be carried on without the purpose of gain for its Members, and any profits or other accretions to the Corporation shall be used in furtherance of its purposes”; and
- (c) the “Directors shall serve as such without remuneration, and no Director shall directly or indirectly receive any profit from his or her position as such”.

23. However, unbeknownst to RCC at the time of incorporation of the Corporation, Singh, TCF and Miller Thomson were setting the Corporation up as a vehicle by which TCF could extract cash from RCC and its congregant donors for many years to come.

24. Miller Thomson prepared and filed the Articles, taking its instructions from Singh who was the sole incorporator.

25. The Corporation has two equal members: RCC and TCF.

26. The Corporation's current board consists of three directors:

- (a) Pamela O'Dell ("O'Dell"), as the designate of RCC;
- (b) Singh as the designate of TCF; and
- (c) Elgersma, as the joint designate of RCC and TCF.

27. O'Dell is not a director or officer of RCC and is not, therefore, automatically disqualified from voting on contracts or transactions between the Corporation and RCC, or between the Corporation and TCF.

28. On or about November 21, 2019, the Corporation adopted By-law No. 2019-1 (the "By-law").

The By-law provides that:

- (a) the board of directors consists of one individual nominated by RCC, one individual nominated by TCF and one individual nominated jointly by RCC and TCF (By-law, section 4.05);
- (b) an annual meeting would be held within six months of the financial year end of the Corporation (By-law, section 6.01(b));
- (c) the term of office of each officer is one year expiring at the next annual meeting (By-law, section 8.02);

- (d) the CEO shall supervise and control the operations of the Corporation (By-law, section 8.05);
- (e) an officer who is a director shall not be entitled to remuneration for acting as such (By-law, section 8.12);
- (f) in accordance with the CNCA and the By-law, directors and officers shall disclose any interests, whether direct, indirect or imputed, in any matter as required by the CNCA and comply with all other requirements in the CNCA in respect of such conflict of interest (By-law, section 10.01);
- (g) the Corporation shall purchase and maintain appropriate liability insurance, including directors' and officers' insurance (By-law, section 11.01(a)(ii)); and
- (h) the financial year of the Corporation ends on December 31st each year (By-law, section 14.01).

29. Miller Thomson, acting exclusively on the instructions of Singh as first director of the Corporation, prepared the By-law on behalf of the Corporation.

30. On or about February 7, 2020, the Corporation, RCC and TCF entered into a unanimous member agreement (“UMA”). The UMA provides that:

- (a) the board of directors has all of the powers to manage the business and affairs of the Corporation except as otherwise set out in the UMA (UMA, section II.01(d));

- (b) the Corporation has three directors, consisting of one individual designated by the plaintiff, one individual designated by TCF and one individual jointly designated by the plaintiff and TCF (UMA, section II.01(c), (e) and (g));
- (c) Singh is the chair of the board and CEO, with a term of office expiring at the first annual meeting (UMA, section II.01(h));
- (d) all cheques, withdrawal, drawings or authorizations to withdraw or remove funds from the bank accounts of the Corporation require the signature of any one director or officer of the Corporation (UMA, section II.01(i));
- (e) the plaintiff has the right to approve the Corporation's entering into any contracts or arrangements with any director, officer or employee of a member other than in the ordinary course of business and on normal commercial terms (UMA, section II.02(g));
and
- (f) upon the sale of the Property to a third party, the net sale proceeds, after repaying any indebtedness of the Corporation related to the Property, shall be applied to the option costs (the "**Option Premium**") paid by the applicant (the sum of \$506,200), with the balance paid to the members equally (UMA, section IV.01).

31. Miller Thomson, acting exclusively on the instructions of Singh, prepared the UMA. No other law firm represented the parties to the UMA. As Miller Thomson had acted for both RCC and TCF as members of the Corporation, RCC believed and understood that Miller Thomson continued to act as its counsel for RCC and TCF in respect of the preparation and execution of the UMA. At no time did Miller Thomson advise RCC that it was not acting for RCC and TCF

jointly. Nor did Miller Thomson ever advise RCC that it should seek either independent legal representation or independent legal advice (collectively, “ILR”) before executing the UMA.

32. The effect of the UMA is that, despite being the sole financial contributor to the Corporation, RCC has no power to remove or replace a majority of the directors (in particular, Singh or Elgersma) or to ensure that at all times the Corporation has a board of directors that will carry out the stated purposes of the Corporation honestly and in good faith with a view to the best interests of the Corporation. Further, Singh remains in office as chair and CEO until an annual meeting is held, which he has neglected or refused to call.
33. Another effect of the UMA is that it enables TCF to profit solely from the financial contributions of RCC and its congregant donors. For example, if, after closing the purchase of the Property, RCC pays sufficient rent or raises donations from the community to repay the first mortgage, then, assuming that the value of the Property is \$1,506,200, TCF would acquire an equity interest in the Property having a value of \$500,000. RCC’s equity interest in the Property would be \$1,006,200. However, RCC has taken all the financial risk and repaid a mortgage having an original principal of \$1,384,800 and paid the entire Option Premium of \$506,200 (for a minimum total of \$1,891,000) while TCF has paid nothing. Accordingly, approximately 33.2% of each dollar donated to RCC and applied to the purchase or occupancy of the Property is indirectly going to TCF. Neither Singh nor Miller Thomson explained this commercially absurd result to RCC.
34. Only Singh and his subordinates at TCF exercise cheque-signing authority on behalf of the Corporation. Singh has refused to allow either O’Dell or Elgersma to have cheque-signing

authority. This arrangement allows Singh to use funds of the Corporation to pay TCF or its insiders, irrespective of whether he has been authorized to do so.

Closing of the Purchase

35. RCC went on a fundraising blitz to raise funds from its congregants and the wider community in Cambridge and the surrounding area to acquire the Property. By the closing date, it had raised \$356,200. It raised a further \$150,000 by July 31, 2020 for a total of \$506,200.
36. On or about March 5, 2020, the Corporation purchased the Property for a price of \$1,531,000 from First United Church. The purchase price was funded in part by an advance of \$1,384,800 on a registered first mortgage/charge of land (the “**Mortgage**”) in favour of Coldpoint, with the balance of the purchase price and acquisition expenses funded by RCC. TCF made no contribution to the purchase price.
37. Miller Thomson acted for the Corporation on the purchase, finance and lease of the Property, taking its instructions exclusively from Singh in his capacity as CEO of the Corporation. RCC’s then designate on the Corporation’s board was Narima Whitman (“**Whitman**”). She attended at the Guelph offices of Miller Thomson to execute all the closing documents for the purchase and financing on behalf of the Corporation. At the same time, Whitman executed the lease as a signing officer of RCC while Singh executed it as CEO on behalf of the Corporation.
38. While Miller Thomson had every opportunity to do so, it did not, on or before closing, advise Whitman or anyone else representing RCC that Miller Thomson was not acting for RCC and that it should seek ILR counsel. TCF was not party to the purchase, lease or financing.

Lease and Option to Purchase

39. Miller Thomson also acted on a joint retainer for the Corporation and RCC in preparing the lease and option agreement dated March 5, 2020 (the “Lease”) between the Corporation and RCC, taking its instructions exclusively from Singh in his capacity as CEO of the Corporation.

40. Under the Lease, RCC agreed to pay basic rent to the Corporation at:

- (a) the fixed rate of \$50,000 for the first year of the term; and
- (b) \$250,000 a year for each of the remaining nine years of the term (subject to a discretionary discount).

41. RCC is also liable to pay property taxes in respect of the leased premises even though, had it purchased the Property in its own name as sole owner in accordance with its original intention, it would be exempt from property taxes. Miller Thomson, which has special expertise in the taxation of charities, said nothing to RCC or the Corporation about the tax disadvantage to their suggested use of the Corporation to hold title to the Property or the alternative of having RCC hold title.

42. The City of Cambridge has billed the Corporation \$27,038.76 in respect of property taxes for the Property in 2020. The board of the Corporation passed a resolution authorizing Miller Thomson to appeal the bill. Despite this, on February 9, 2021, Singh and Elgersma acting unilaterally and without notice to O’Dell, authorized the Corporation to pay the entire bill. The Corporation is not the sole tenant of the Property and no other tenant was required to bear any part of this expense.

43. The rent rate after the first year was subject to a discount at the discretion of the board of directors of the Corporation. While RCC did not control the board of the Corporation, it had

faith that the directors would keep the rent as low as possible given that the purpose of the Corporation was to acquire the Property for the use of the plaintiff church and not for its gain of the Corporation's members or the direct or indirect benefit of its directors.

44. On or about January 29, 2021, TCF (who is not a party to the Lease) sent a letter to RCC stating that, effective February 14, 2021, the basic rent under the Lease would almost triple from \$50,000 (plus HST) in the first year to \$144,280 (plus HST) in the second year. The explanation for this charge was that, in effect, RCC was the ultimate guarantor that the Property must generate \$250,000 a year in rent and, therefore, must pay \$250,000 less rent received from other tenants. The Lease contains no such formula. Furthermore, the board of the Corporation never met to fix the annual rent as contemplated in the Lease. Singh acted unilaterally in setting the rent for the second year.
45. Miller Thomson never explained to RCC how the rent after the first year would work given the purposes of the Corporation set out in the Articles, the nature of the Corporation as a non-profit organization and Singh's conflict of interest as a director and officer of both the Corporation and TCF. For example, the need for annual revenues of \$250,000 in respect of the Property is not self-evident particularly when total rents from all tenants (including RCC) in the first year amounted to \$111,008.03. Also, had a board meeting of the Corporation been held to consider the rent (as required by the Lease), Singh would be in a conflict and unable to vote because the main reason for demanding a rent increase from RCC is to then siphon it out of the Corporation as management fees to TCF or other related-party payments to TCF insiders.
46. Under the Lease, RCC has an option to purchase the Property at any time during the 10-year lease term (the "**Option**"). RCC paid the Option Premium of \$506,200. However, the Option

is illusory and the Option Premium was, in effect, a disguised forfeiture of 71% of RCC's funds for no consideration.

47. The exercise price under the Option (the "**Exercise Price**") has two separate formulae but only one is operative because the Exercise Price is stated to be the greater of the two formulae.
48. Under either formula, the cost of exercising the Option (the "**Option Cost**") is the sum of the Option Premium and the Exercise Price. The Option Premium is constant in both formulae but the Exercise Price in one formula (the "**Operative Formula**") is \$147,200 higher on the closing date ("**Day 1**") than in the second formula (the "**Superfluous Formula**"). This differential remains constant throughout the Lease to the end of year 10. That is why the latter formula is superfluous and merely adds confusion to the Lease.
49. The Operative Formula provides for an Exercise Price equal to the amount owing under the Mortgage. On Day 1, the Option Cost was \$1,384,800 (the Mortgage principal) plus the Option Premium (\$506,200) for a total of \$1,891,600. The purchase price of the Property (and presumptive market value on Day 1) was \$1,531,000, meaning that, if exercised on Day 1, RCC would have sustained an instant loss of \$360,600 (or 71% of the entire Option Premium).
50. The Superfluous Formula provides for an Exercise Price equal to the full purchase price for the Property (\$1,531,000) plus notional interest on it at a rate of 2% per annum less the Option Premium. But the Option Premium has already been paid and therefore forms part of the Option Cost. At the time of closing, the Option Cost was the purchase price of the Property (\$1,531,000 minus the Option Premium) plus the Option Premium (\$506,200) for a total of \$1,531,000. The purchase price of the Property on closing was \$1,531,000, meaning that, if exercised on Day 1, RCC would break even (but for the Operative Formula which trumps).

However, if RCC had enough to close the purchase on Day 1, it would have had no need for the Lease, the Option or the Corporation.

51. RCC's loss increases under the Lease with each rent payment plus the accrual of interest on the Exercise Price at the rate of 2% per annum. By the end of 10 years, the Exercise Price would increase by 20% of the principal amount of the Mortgage, reaching \$1,661,760. By the end of 10 years, the Option Cost would be \$2,167,960. In addition, by the end of 10 years, RCC could have paid up to \$2.3 million in total rent (excluding property taxes). Its total Option Cost and rental cost would then be \$4,467,960 (almost triple the amount for which the First United Church sold the Property).

52. Miller Thomson never explained to RCC how the option to purchase would work and whether RCC could possibly raise from its donor congregants enough money beyond the Option Premium (\$506,200) to exercise the Option on Day 1 (at total Option Cost = \$1,531,000) or at the end of the Lease term (\$1,661,760) after paying exorbitant rent charges (\$2.3 million), or at any other time during the Lease term. Nor did Miller Thomson advise RCC that 71% of the Option Premium was lost the moment the purchase was closed and that the Option was entirely an illusion. It had negative value (out-of-the-money) on Day 1 and at all times after Day 1.

Combined Effect of Option and UMA

53. Had RCC exercised the Option on Day 1, it would have had an Option Cost of \$1,891,600. Under the UMA, RCC's share of the gross proceeds of sale would be \$945,500 and TCF's share would be \$439,300 (or 31.7% of the total proceeds). If RCC were to exercise the Option on the last day of the Lease, its Option Cost would be \$2,167,960 of Option Cost. RCC's share of the \$1,661,760 Exercise Price would be \$1,155,560 and TCF's share would be \$577,780 (or

34.8% of the total proceeds). If RCC were to pay the full Option Cost and rent, it would have \$0.26 of equity for every \$1 in donations that it was able to allocate to the overall building and occupancy cost (rather than to its operations and programs).

54. It would never have made any financial sense for RCC to exercise its Option. If it exercised its Option on Day 1, it would pay a further \$1,384,800 to acquire an equity interest worth only \$945,500. With the lost portion of the Option Premium, the exercise of the Option on Day 1 would only increase RCC's aggregate loss from \$360,600 to \$945,500. If RCC exercised the Option at the end of its term, it would pay a further \$1,661,760 to acquire an equity interest worth only \$1,155,560 (without considering intervening changes in the value of the Property). With the lost portion of the Option Premium, the exercise of the Option would only deepen RCC's aggregate loss from \$360,600 to \$1,012,400 (without considering intervening changes in the value of the Property).
55. The Mortgage also provides for further advances of \$640,000 to cover 80% of the renovation costs to the Property. The total renovation costs were projected to be \$800,000. TCC was to pay 20% of these costs (\$160,000), which RCC provided as part of the Option Premium. Under the Lease, the additional advances under the Mortgage (together with interest thereon at 2% per annum) are added to the Exercise Price under the Operative Formula. However, if RCC were to exercise the Option, its share of the equity in the Property would only be 50% of this incremental Exercise Price (i.e., \$320,000 without taking into account interest that must be paid on the renovation loan). TCF would receive an incremental increase in its equity equal to \$320,000 despite having contributed nothing to the renovation costs. RCC's incremental equity from the renovation work would increase by 40% of the total cost it has borne for the \$800,000

in renovation work (less if interest on the renovation loan is factored into the calculation).

Miller Thomson failed to explain any of this to the affected party, RCC.

56. The Option was financially and legally nonsensical. It was part of an elaborate fraud or deceit perpetrated by Singh and TCF on RCC. RCC was duped into thinking that the Option would ultimately provide it with ownership of the Property. That was never going to be possible. But the only ones who knew this were Singh and Miller Thomson. For RCC, it would take a long time before the truth finally emerged.

History of the Property Management Agreement

57. The property management agreement in favour of TCF was the main financial interest that TCF has in the Corporation. The only other interest that it has is a theoretical share of some of the profits from the exercise of the Option, which was a total non-starter from the beginning.
58. Conspicuously absent from the documents settled and executed before closing was the property services agreement (“**Management Agreement**”) between TCF and TCC.
59. On or about July 30, 2019, TCF presented a draft Management Agreement between itself and RCC (the “**First TCF Draft**”), the terms of which may be summarized as follows:

- (a) with certain exceptions, TCF would be compensated at a rate of 20% (plus HST) of all collected monthly rental income from the Property (including from the plaintiff), parking revenue, grant revenue and advertising revenue; and
- (b) there was no stated term, meaning that the plaintiff could, at any time, terminate the agreement on giving TCF reasonable notice.

60. However, the presentation of the First TCF Draft was a form of subterfuge. TCF had much more onerous terms in mind but did not want to disclose these terms to RCC until as long as possible after the purchase of the Property was closed. Meanwhile, TCF would first gain RCC's trust and then gain control over its financial contribution to the purchase (that is, after the plaintiff had paid over the Option Premium to the Corporation).
61. The Management Agreement was a contract in which Singh has a conflict of interest as a director and officer of both the Corporation and TCF. Under the CNCA and the By-law, the entering into of the Management Agreement by the Corporation required disclosure to the directors of the Corporation and the approval of both directors. Singh is ineligible to vote on the approval of the agreement. This gave RCC's designated director a veto on whether the Corporation should enter into the agreement and on what terms. The Management Agreement is also required to be reasonable and fair to the Corporation at the time that it was entered into.
62. By the closing date, there was no agreement between TCF, the Corporation and RCC on the rates of management fees that TCF intended to charge. Singh knew that his price would be very contentious and wanted the purchase closed and the Option Premium paid by RCC before it became aware of what he would be extracting by way of management fees. He intentionally withheld this information until RCC was trapped.
63. Miller Thomson had a duty of care to the Corporation to ensure that the Management Agreement was in place before the Corporation closed the purchase of the Property. The failure to put the Management Agreement in place by the closing date transferred the entire leverage in the transaction from RCC to TCF especially with Singh as CEO of the Corporation with control of its bank account.

64. Singh circumvented the statutory approval requirement by not seeking board or member approval of the Management Agreement.
65. Despite the absence of an agreement, TCF extracted management fees from the Corporation. In the 10-month period from the closing date of the purchase and ending on December 31, 2020, Singh as CEO of the Corporation (and without any board or member approval) authorized the payment of management fees totalling \$80,020 to TCF. These fees were far higher than 20% of the \$111,009.72 in rents collected in the same period (*i.e.*, \$22,201.94).
66. Alarmed at the state of affairs in which Singh unilaterally authorized the extraction of monies from the Corporation under the cover of management fees, RCC continued to press Singh for the Management Agreement.
67. In October 2020, Singh finally presented a second draft of the Management Agreement (the “**TCF Second Draft**”), the terms of which may be summarized as follows:
- (a) fixed fees were at the rate of \$90,000 per annum for property management (based on a minimum of 2,100 hours or an effective rate of \$42.86 an hour, double the going rate) and a further \$12,000 per annum for accounting services (for total fixed fees of \$102,000);
 - (b) fees for janitorial services were extra;
 - (c) at the discretion of the directors of the Corporation, there were additional fees for grant writing and marketing;
 - (d) the board of the Corporation could pay for additional time;

- (e) all prices were subject to a CPI rate of inflation annually;
- (f) the term was 10 years, commencing retroactively to January 1, 2000 (before the Corporation acquired the Property);
- (g) if the Corporation cancelled the agreement at any time before January 1, 2030, there was a penalty equal to three years of the minimum property management fee at the relevant rate for those years; and
- (h) the Corporation had no rights of termination even for cause.

68. The board of the Corporation rejected the TCF Second Draft.

69. RCC then engaged a law firm, Gray, Whitley LLP (“GW”), which, on or about February 5, 2021, sent a letter (the “GW Letter”) to Singh, TCF and Elgersma objecting, among other things, to the appropriation of monies by Singh to cover management fees under the terms of a Management Agreement known only to himself.

70. Singh summoned a meeting of the Corporation’s directors ostensibly for the exclusive purpose of discussing the Coldpoint Mortgage, which was not in default. In fact, that was a ruse. Singh’s intent was to ambush O’Dell by springing other business on her.

71. On or about February 9, 2021, and in the face of knowledge that O’Dell would not be attending a meeting called to discuss the GW Letter, Singh purported to expand the business conducted at the meeting. No notice was given to O’Dell that the Management Agreement would be considered at the meeting, and the Management Agreement was only circulated to O’Dell after it was signed by Singh on behalf of TCF and Elgersma on behalf of the Corporation. Singh

purported to approve the Corporation entering into the Management Agreement in his capacity as a director of the Corporation.

72. The Management Agreement executed on February 9, 2021 may be summarized as follows:

- (a) a fee of \$90,000 for the calendar year 2020 (including before the Property was acquired) with no fee for any part of calendar year 2019;
- (b) a term spanning January 1, 2020 to December 31, 2021;
- (c) for the calendar year 2021, the basic fee for property, leasing and governance management is \$52,000 per annum (based on a 1,000-hour annual retainer) and an additional \$52 per hour for additional time required by the directors (that is, almost \$9 more per hour than under the rejected TCF Second Draft);
- (d) for the same period, a construction management fee at market rates estimated at \$38,000 per year or less;
- (e) for the same period, bookkeeping and corporate filing services at market rates estimated at \$12,000 per year;
- (f) janitorial services at market rates although covered under the manager's listed services;
- (g) all rates to be adjusted for inflation and market rate analysis upon renewal; and
- (h) the Corporation had no rights to terminate with or without cause.

73. Therefore, the Management Agreement had a price of \$90,000 for 2020 and \$102,000 for 2021.

While the number of hours in the Management Agreement is less than half that contemplated

in the TCF Second Draft, the total fixed fee (\$102,000 per annum) is the same. This means that, if TCF claims that it spent 2,100 hours performing property management services, the cost under the Management Agreement would climb another \$57,200 over the cost of the TCF Second Draft to reach \$159,200.

74. TCF is not a competent property manager or construction project manager. For example, it authorized the commencement of renovation work without seeking any input from RCC as tenant and failed to apply for a building permit. As a result of a lack of building permit, the City of Cambridge ordered the suspension of further work and one of the contractors, Russell Electric, has refused to re-enter the building.

75. Also, at the same February 9, 2021 meeting (which was two business days after Singh received the GW Letter and without prior notice to O'Dell), Singh and Elgersma purported to approve a payment of \$58,680 in disputed management fees to TCF. This payment was taken from the advance of \$138,556.86 to the Corporation made on behalf of Coldpoint on or about January 29, 2021. The purpose of this loan advance was to finance ongoing renovation work, not the TCF fees that were in dispute. Singh's and Elgersma's approval of the payment was not properly authorized by the directors of the Corporation entitled to vote on the resolution. Also, the purchase price under the Lease is increased dollar-for-dollar by the amount outstanding on the Mortgage, which means that the fees appropriated by TCF would ultimately be borne by RCC if it were to exercise its Option.

Direct Payments to TCF Directors and Employees

76. In contravention of the UMA, Singh has also authorized payments by the Corporation to the following TCF directors, employees and related parties without prior disclosure to, or the approval of, the plaintiff:

- (a) \$3,457.80 to Natasa DeVilliers, wife of Cory DeVilliers. Both Natasa and Cory DeVilliers are TCF directors and employees;
- (b) unknown amounts to O&V Testing Room Ltd., a company owned or controlled by Natasa DeVilliers;
- (c) unknown amounts to Cory DeVilliers; and
- (d) \$3,000 to Celine Singh, wife of Reverend Singh, to December 31, 2020 and a further \$2,000 in the first two months of 2021 for alleged marketing services.

Miller Thomson and the Lack of ILR Counsel

77. Singh represented to RCC that Miller Thomson was acting for the Corporation and both partners, TCF and RCC. At no time did Singh or Miller Thomson advise RCC or its designates on the board of the Corporation that Miller Thomson was acting exclusively for TCF in its work in relation to the Corporation (and not for RCC or the Corporation) or that RCC required ILR.

78. Further, Singh consistently dissuaded RCC from obtaining ILR counsel. Singh said that it was unnecessary because Tang of Miller Thomson was a “Christian” and was acting for the Corporation and both members, and that engaging ILR counsel would only entail unnecessary expense, cause delay and jeopardise the opportunity to acquire the Property.

79. Elgersma also dissuaded the plaintiff from obtaining ILR counsel, saying that it was unnecessary because Tang was acting for the Corporation and both its members, which was fortunate because RCC “would save thousands of dollars in legal bills”.
80. Miller Thomson was in a much better position to understand the certain peril that the transactions would put RCC in and owed it a duty of care under its joint retainer to act for TCF, the Corporation and RCC without subordinating the interests of one joint client over another. If Miller Thomson did not intend to act for RCC, it had a duty to warn RCC and the directors of the Corporation other than Singh that Miller Thomson was not acting for RCC and that it should obtain ILR counsel. Miller Thomson should not have proceeded with any of the transactions without ensuring that RCC was notified, both verbally and in writing, to obtain ILR counsel and that Miller Thomson was not looking out for RCC’s interests. A clause to that effect should have been included in each of the UMA, the Lease and the Management Agreement. This is particularly necessary where, if Miller Thomson assumed that it was not acting for RCC, then it followed that RCC was, to the knowledge of Miller Thomson, entering into a series of highly complex transactions with no legal representation.
81. Any ambiguity in Miller Thomson’s representation of RCC should be construed not in favour of the law firm but in favour of RCC. The law firm had intimate knowledge of the transactions and the combined consequences of the Lease, UMA and By-law. RCC could not have this level of knowledge without ILR.
82. The Corporation paid all legal fees of Miller Thomson for the legal services described in this Statement of Claim, totalling \$195,583.03. Most of these fees were paid out of the Option Premium paid by RCC on closing or in post-closing rent payments.

83. On or about December 16, 2020, Singh advised RCC for the first time that Miller Thomson was acting only for TCF and not for the Corporation or RCC. RCC's directors were shocked to hear this and O'Dell immediately sought answers from Miller Thomson.
84. On or about January 12, 2021, Miller Thomson advised O'Dell for the first time that TCF was its client and not the Corporation or RCC. Despite the conflict of interest (including the By-law and CNCA conflict provisions), Miller Thomson acted exclusively on Singh's instructions in Singh's capacity as CEO of the Corporation in allowing the Corporation to pay for all invoices Miller Thomson had rendered to TCF.
85. A member of the Corporation has no authority to instruct a law firm. Singh could only instruct Miller Thomson in his capacity as CEO of the Corporation.

Invalidity of By-law and UMA

86. The Articles provide for a single class of members rather than separate classes with different class voting rights. Under the CNCA, the members of the Corporation are entitled, at each annual meeting, to determine the number of directors within the range of minimum and maximum directors set out in the Articles (in this case 3-15 directors) and elect all directors by ordinary resolution (that is, by a majority of the votes cast at the meeting).
87. The By-law is subject to the CNCA and the Articles, which are paramount to the By-law. Nevertheless, section 4.05 of the Corporation's By-law purports to provide, in effect, for separate voting rights for the members, TCF and RCC. Section 4.05 invalidly purports to override the effect of the Articles and the CNCA by fixing the number of directors at three and pre-determining the composition of the board so that there is no longer any mechanism in

which the members can collectively, by ordinary resolution, fix the number of directors and vote on the composition of the entire board at each annual meeting as the CNCA provides.

88. In 2020, the Corporation received a gift of \$20,000 from First United Church, the vendor of the Property. First United Church is not a member of the Corporation. As a result of receiving a gift or other financial assistance over \$10,000 in a fiscal period from a non-member, the Corporation would likely become a soliciting corporation commencing at its 2021 annual meeting.

89. The full circumstances of the financial assistance from First United Church are unknown to RCC. However, by email dated October 18, 2020, Miller Thomson opined to the Corporation that the financial assistance did not, at that time, make the Corporation a soliciting corporation. What Miller Thomson did not say is the attempt to characterize the gift as a contribution to legal expenses made no difference to the determination of the Corporation's status as a soliciting or non-soliciting corporation. Miller Thomson did not say whether its opinion on the Corporation's continuing status as a non-soliciting corporation turned on (a) whether First United Church (i) made an unsolicited gift to the Corporation or (ii) had not itself received more than \$10,000 in gifts, donations or other financial assistance in any of one or more of the immediately preceding three fiscal periods or (b) the fact that a change of status from non-soliciting to soliciting corporation only takes place at the ensuing annual meeting of members (in this case, the Corporation's 2021 annual meeting). Miller Thomson also failed to state that, unless First United Church made an unsolicited gift or was itself not a soliciting corporation (or akin to a soliciting corporation even though not incorporated under the CNCA), the UMA would be automatically terminated at the conclusion of the Corporation's 2021 annual meeting.

90. Without section 4.05 of the By-law and the UMA, the members of the Corporation will be deadlocked in the election of directors. Without Elgersma as a director, the board of the Corporation is also deadlocked.

Other Serious Governance Issues

91. At least as early November 5 and 18, 2020, RCC raised with Singh, Elgersma and TCF several serious concerns it had with respect to the governance and operations of the Corporation. Some of these concerns include the following:

- (a) no annual or special meeting of members of the Corporation has been called or held. The first annual meeting should have been held no later than June 30, 2020. Miller Thomson have advised GW that the meeting need not be held until April 2021 but has ignored the requirement under the By-law it prepared to hold an annual meeting within six months of the fiscal year end;
- (b) the only two members of the Corporation no longer agree on the composition of the board or management. RCC does not agree that Singh should remain in *de facto* control of the Corporation's operations or that Elgersma should remain in office as a director. Despite being a director of the Corporation, Elgersma has rubber-stamped any contentious issues in favour of TCF without seeking ILR. He has not acted as a reasonably prudent director in siding with TCF and its financial demands;
- (c) no annual audited financial statements of the Corporation have been produced or submitted to the board for approval. Nor has the applicant waived its right to receive

audited financial statements. The financial year end of the Corporation is December 31. Therefore, financial statements are required for the years ending December 31, 2019 and 2020;

- (d) the board of the Corporation has not properly approved the entering into of any Management Agreement between the Corporation and TCF. Singh is nevertheless operating under the terms of a management agreement known only to himself;
- (e) Singh caused the Corporation to pay \$195,600 in legal fees to Miller Thomson without having made prior disclosure to, or having sought, the Corporation's approval; and
- (f) Singh failed to obtain directors' and officers' liability insurance until September 24, 2020, despite the express requirement under the Corporation's By-law to do so, which exposed the volunteer directors of the Corporation to unnecessary risk.

Liability of the Defendants to the RCC

92. By reason of the facts plead herein, the defendants are liable to RCC for breach of duty (contractual, tortious, equitable, fiduciary, statutory, regulatory and/or other duties) including negligent and/or fraudulent misrepresentation and fraud.

93. Respecting negligent and/or fraudulent misrepresentation, RCC relied on the representations described above to its detriment, and the damages suffered by RCC in furtherance of such reliance were reasonably foreseeable and proximate.

94. TCF and Singh are liable to RCC for the fraud that they have committed as particularized in the facts set out above.

95. At all material times, (a) Miller Thomson owed fiduciary duties to RCC, and (b) and Singh and Elgersma owed duties to RCC under section 253 of the CNCA as well as fiduciary duties to the Corporation. In the alternative, and if necessary, RCC seeks leave of the court to commence a derivative claim on behalf of the Corporation as against the defendants (other than Coldpoint) pursuant to sections 251 and 252 of CNCA to recover damages of breach of duties owed to the Corporation.

Oppressive Conduct of the Defendants

96. By reason of the facts pleaded herein, the Corporation, TCF, Singh and/or Elgersma have breached section 253 of CNCA by carrying on the business affairs of the Corporation in a manner that is oppressive or unfairly prejudicial or unfairly disregards the interests of RCC.

97. RCC seeks remedies under sections 128, 141 and 253 of CNCA to set aside or nullify the by-law and agreements set out in paragraph 1 above that are oppressive, unfairly prejudicial to or unfairly disregard the interests of RCC.

98. RCC further pleads that absent the appointment of a receiver manager over all of the assets, property and undertakings of the Corporation, TCF, Singh and Elgersma will continue to act oppressively and unlawfully siphon funds from the Corporation.

99. In the alternative, an injunction restraining TCF, Singh and Elgersma from dissipating, disposing of or otherwise dealing with the assets, property and undertakings of the Corporation.

The Defendants are Unjustly Enriched

100. By virtue of the facts pleaded herein, the defendants (other than Coldpoint) have been unjustly enriched by their wrongful acts and omissions. RCC has suffered a corresponding deprivation as a result of these wrongful acts and omissions. There is no juristic reason for the enrichment of these defendants and RCC is entitled to a constructive trust with respect to such enrichment.

Damages

101. RCC has suffered damages as a result of the actions and/or omissions of the defendants (other than Coldpoint), including but not limited to the payment of the Option Premium, rent, management fees and legal fees. Such damages were reasonably foreseeable by such defendants.

102. RCC seeks the disgorgement of all fees paid to TCF and Singh by the Corporation. RCC further seeks disgorgement of the legal fees paid by the Corporation to Miller Thomson.

103. Further, by virtue of the conduct set out above, an award of punitive damages is warranted. The defendants' conduct was high-handed and demonstrated reckless and wanton disregard for RCC and its congregants. The defendants' conduct (excluding Coldpoint) was particularly egregious and warrants punitive damages.

104. RCC pleads and relies on the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23.

105. RCC proposes that this action be tried in Kitchener, Ontario.

February 22, 2021

WEINTRAUB ERSKINE HUANG LLP
365 Bay Street, Suite 501
Toronto ON
M5H 2V1

Sara J. Erskine (LSO# 46856G)
Email: sara.erskine@wehlitigation.com
Tel: 416.597.5408
Fax: 416.306.8451

Lawyers for the Plaintiff

EXHIBIT “F”

This is Exhibit "F" referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely.*

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal stroke, positioned above a horizontal line.

A Commissioner for taking affidavits

PERSONAL & CONFIDENTIAL

March 11, 2021

VIA EMAIL AND COURIER

Graham Singh
Trinity Centres Cambridge
1439 rue Sainte-Catherine Ouest
Montreal, QC H3G 1S6

Dear Sir:

Re: Indebtedness of Trinity Centres Cambridge (the “Borrower”) to Coldpoint Holdings Ltd. (the “Lender”)

We are the solicitors for the Lender with respect to the above-noted matter.

We refer to the credit facility made available by the Lender to the Borrower (the “**Credit Facility**”) pursuant to a loan agreement dated March 5, 2020 (the “**Loan Agreement**”). Capitalized terms not otherwise defined in this letter have the meaning given to them in the Loan Agreement.

As at March 9, 2021, the Borrower’s indebtedness to the Lender under the Credit Facility is the sum of \$1,551,759.79 plus accruing interest and costs as set out in Schedule “**A**” attached hereto (the “**Indebtedness**”).

The Borrower has defaulted in its obligations to the Lender under the terms of the Loan Agreement. In particular, as a result of the claim initiated against the Borrower bearing Court File No. CV-12-00000281-0000 (the “**Litigation**”), the Borrower has breached its continuing warranty under section 12(b) of the Loan Agreement which constitutes an Event of Default thereunder. As a result, the Lender hereby accelerates the repayment of the Indebtedness in accordance with the terms of the Loan Agreement such that the full amount of the Indebtedness is immediately due and payable.

We confirm that, in accordance with the terms of the Loan Agreement, the Lender’s obligation to make further credit or other accommodations available to the Borrower under the Credit Facility is hereby terminated.

On behalf of the Lender, we hereby demand payment from you of the Indebtedness, namely the sum of \$1,551,759.79, together with interest thereon and all costs, including legal fees and

disbursements, incurred by the Lender to the date of payment. Interest accrues on the Indebtedness at the rate of 2% per annum. As at today's date, the amount which is accruing is the amount of \$85.00 per day.

Please note that the Indebtedness will continue to accrue interest at the rates set out in the Loan Agreement, and costs will continue to be incurred by the Lender, for which you will be responsible, until payment of all the Indebtedness is received by the Lender by either certified cheque or bank draft at the following address:

Coldpoint Holdings Ltd.
5068 Whitelaw Road – Unit 1
Guelph, Ontario N1H 6J3

Attention: David Wood
President

or by Thornton Grout Finnigan LLP at the above noted address, to the attention of the undersigned.

If full payment, as set forth above, is not received by **5:00pm on Monday, March 22, 2021**, the Lender shall pursue its remedies against you and will take whatever steps it deems appropriate to seek repayment of the amounts set out herein.

We also enclose at this time a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* (Canada) together with a Consent hereto. If you consent to the Lender enforcing its rights and remedies without further delay, please date and execute one copy of the Consent attached to the enclosed Notice of Intention to Enforce Security and return same to the undersigned by email forthwith.

Yours truly,

Thornton Grout Finnigan LLP



Tamara Markovic
TM/rb

Encl.

cc: David Wood, *Coldpoint Holdings Ltd.* (via email)

Schedule “A”

**Indebtedness¹ of Trinity Centres Cambridge
to Coldpoint Holdings Ltd.
as at March 9, 2021**

<u>Facility</u>	<u>Principal Balance</u>	<u>Accrued Interest</u>	<u>Total</u>	<u>Per Diem</u>
Term Facility	\$1,523,356.86	\$28,401.93 ²	\$1,551,759.79	\$85.00

E.&O.E.

¹ All amounts in Canadian dollars.

² Interest accrues at the rate of 2% *per annum*.

**NOTICE OF INTENTION TO ENFORCE SECURITY
PURSUANT TO SECTION 244 OF THE
BANKRUPTCY AND INSOLVENCY ACT (CANADA)**

TO: Trinity Centres Cambridge (the “Borrower”)

Take notice that:

1. Coldpoint Holdings Ltd. (the “**Lender**”), a secured creditor, intends to enforce its security on the property of the Borrower described below:

- (a) all present and after-acquired real and personal property of the Borrower; and
- (b) all proceeds of the foregoing collateral.

2. The security that is to be enforced includes:

- (a) a General Security Agreement dated March 5, 2020;
- (b) a Charge/Mortgage in the principal amount of \$2,500,000 registered on March 5, 2020 in the Land Registry Office for Waterloo (Kitchener) (LRO #58) as Instrument No. R1584872 against PIN 03817-0022 (R) and as Instrument No. WR1247054 against PIN 03817-0091 (LT); and
- (c) General Assignment of Rents registered on March 5, 2020 in the Land Registry Office for Waterloo (Kitchener) (LRO #58) as Instrument No. R1584873 against PIN 03817-0022 (R) and as Instrument No. WR1247059 against PIN 03817-0091 (LT);

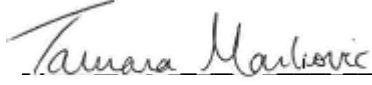
(collectively, the “**Security**”).

3. The total amount of the indebtedness secured by the Security is, as at March 9, 2021, \$1,551,758.79, plus accruing interest and costs incurred by or charged to the Lender.

4. The Lender will not have the right to enforce the Security until after the expiry of the 10-day period after this notice is sent unless the Borrower consents to an earlier enforcement.

Dated at Toronto, Ontario, this 11th day of March, 2021.

**COLDPOINT HOLDINGS LTD.,
by its solicitors herein, Thornton Grout Finnigan LLP**

Per: 
Tamara Markovic
File No. 2138-001
Thornton Grout Finnigan LLP
100 Wellington St. West, Suite 3200
Toronto, ON M5K 1K7

CONSENT

TO: Coldpoint Holdings Ltd. (the “Lender”)

FROM: Trinity Centres Cambridge (the “Borrower”)

The Borrower acknowledges receipt of a Notice of Intention to Enforce Security delivered by the Lender.

For consideration received, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Borrower hereby consents to the immediate enforcement by the Lender of the security held by it from the Borrower, and for the same consideration waives completely all rights to any delay by or any further notice from the Lender with respect to the enforcement of the Lender’s security and the exercise of the other remedies of the Lender against the Borrower.

DATED at _____ this _____ day of _____, 2021.

TRINITY CENTRES CAMBRIDGE

Per: _____
Name:
Title:

I have the authority to bind the Borrower.

EXHIBIT “G”

This is Exhibit "G" referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely.*

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

A Commissioner for taking affidavits

weh Weintraub Erskine Huang LLP

Suite 501, 365 Bay Street, Toronto, Ontario, M5H 2V1
Telephone: 416.306.8450 | Fax: 416.306.8451|
Website: www.wehlitigation.com

Reply To: Sara J. Erskine
Office: 416-597-5408
E-mail: Sara.erskine@wehlitigation.com

March 12, 2021

VIA EMAIL TO:
LWilliams@tgf.ca & tmarkovic@tgf.ca

Leanne Williams & Tamara Markovic
TGF Thornton Grout Finnigan LLP
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON M5K 1K7

VIA EMAIL TO:
mvanzandvoort@airdberlis.com

Mark van Zandvoort
Aird &Berlis LLP
Brookfield Place
181 Bay Street
Suite 1800
Toronto, ON M5J 2T9

Dear Counsel:

Re: River City Christian Reformed Church v. Graham Singh, et al
Court File No. CV-21-00000281-0000

I am in receipt of Bobbie-Jo Brinkman's letter yesterday serving the Notice of Intent to Defend on behalf of Coldpoint Holdings Ltd. I am also in receipt of Mr. van Zandvoort's email last evening confirming his retainer on behalf of Mr. Singh and Trinity Centres Foundation ("TCF"), and providing a copy of the Demand Letter from Coldpoint Holdings Ltd. to TCC dated March 11, 2021.

We note that the alleged default being asserted by Coldpoint Holdings Ltd. in its Demand Letter is that the litigation commenced by River City Christian Reformed Church is "material litigation" pursuant to section 12(b) of the Loan Agreement. River City Christian Reformed Church disputes that its claim is "material litigation" and/or a default under the Loan Agreement.

Further, as the Loan Agreement is a matter that is an issue in the litigation, the determination of whether the litigation is a default under the Loan Agreement should be determined by the Court on a full record. This is of particular importance given the fact that TCC does not have independent legal counsel at this time.

Yesterday, prior to receiving the above correspondence, we secured an urgent motion date before the Kitchener Court for the appointment of a receiver and manager over TCC returnable March 24, 2021. We hereby put the parties on notice, and propose, that both the appointment of a receiver and manager and the Coldpoint Holdings Ltd.'s Demand Letter under the Loan Agreement be dealt with at the March 24, 2021 Urgent Motion. My client's motion materials will be served next week.

With respect to Mr. van Zandvoort's reference in his email concerning alleged defamatory statements by my client's members about Mr. Singh or TCF, I am not aware of any alleged defamatory statements and none were particularized in the email.

Yours truly,

WEINTRAUB ERSKINE HUANG LLP

A handwritten signature in blue ink, appearing to read "Sara J. Erskine", is written over a light blue circular stamp or watermark.

Sara J. Erskine

SJE/jx

March 15, 2021

PERSONAL & CONFIDENTIAL

VIA EMAIL

Sara J. Erskine
Weintraub Erskine Huang LLP
Suite 501 – 365 Bay Street
Toronto, ON M5H 2V1

Dear Ms. Erskine:

Re: River City Christian Reformed Church v. Graham Singh, et al
Court File No. CV-21-00000281-0000

As you know, we are counsel for Coldpoint Holdings Ltd. (“**Coldpoint**”). We write to you in response to your letters dated March 12 and March 14, 2021.

The loan facility you referred to in your letters was made available to Trinity Centres Cambridge (“**TCC**”) pursuant to a loan agreement between Coldpoint and TCC dated March 5, 2020 (the “**Loan Agreement**”) (the “**Credit Facility**”). We also refer to Coldpoint’s demand letter dated March 11, 2021 (the “**Demand Letter**”), a copy of which was provided to you by counsel to Trinity Centres Foundation (“**TCF**”) on March 12, 2021.

We acknowledge your assertion that litigation commenced by River City Christian Reformed Church (“**RCC**”) on February 23, 2021 against, *inter alia*, TCC, TCF and Coldpoint (the “**RCC Litigation**”) is not “material litigation”. This assertion has been made at the same time as you advised that the substance of the RCC Litigation is material enough to warrant an emergency application for the appointment of a receiver over TCC (the “**Receivership Application**”).

As you are aware, RCC is not a party to the Loan Agreement. As such, RCC is not privy to the contractual relationship between Coldpoint and TCC and is not entitled to dispute the veracity of Coldpoint’s Demand Letter. Likewise, RCC has no standing to comment on the draw of funds under the Credit Facilities (though no draws were requested nor granted since January 27, 2021 – the date of the last drawdown on the Credit Facilities). That said, having received a copy of the Demand Letter, RCC is aware that Coldpoint terminated TCC’s ability to request advances under the Credit Facility as at March 11, 2021.

The Receivership Application was booked without the knowledge of, or consultation with, Coldpoint. We require that you immediately provide your proposed draft order setting out the relief sought and advise of how RCC intends to fund the costs of the receivership. Coldpoint, as RCC's secured lender, has not consented to any priming of its security over the assets of TCC.

We welcome the opportunity to discuss the above-noted proceeding, and RCC's proposed motion, with counsel. We have availability for such a discussion after 5:00pm today or tomorrow morning.

Yours truly,

Thornton Grout Finnigan LLP



Tamara Markovic

TM/rb

cc: Mark van Zandvoort, Aird & Berlis LLP, lawyers for Graham Singh and Trinity Centres Foundation (*via email*)

Jameel Madhany, Teplitsky Colson LLP, lawyers for Peter Elgersma (*via email*)

EXHIBIT “H”

This is Exhibit "H" referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely.*

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

A Commissioner for taking affidavits

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE *GIBSON*)

WEDNESDAY, THE 24TH
DAY OF MARCH, 2021

BETWEEN:

(Court Seal)

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

- and -

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION,
TRINITY CENTRES CAMBRIDGE, MILLER THOMSON LLP and
COLDPOINT HOLDINGS LTD.**

Defendants

INTERIM ORDER

THIS MOTION, made by the Plaintiff, River City Christian Reformed Church, for *inter alia*, the appointment of an interim receiver-manager over the Defendant, Trinity Centres Cambridge (“TCC”), pursuant to section 253(3)(b) of the *Not-for-profit Corporations Act* (the “CNCA”) and section 101 of the *Courts of Justice Act*, was heard on March 24, 2021 via video conference at the Waterloo Region Courthouse, 85 Frederick Street, Kitchener, ON N2H 0A7.

ON HEARING the submissions of the lawyers for the Plaintiff, and for the Defendants, Trinity Centres Foundation (“TCF”), Graham Singh (“**Mr. Singh**”), Peter Elgersma (“**Mr. Elgersma**”), Coldpoint Holdings Ltd. (“**Coldpoint**”), and Miller Thomson LLP (collectively, the

“**Defendants Represented by Counsel**”), and upon being advised that: (i) the Defendant Miller Thomson takes no position and the remaining Defendants Represented by Counsel consent to the terms of this Interim Order, on a without prejudice basis; and (ii) the defendant, TCC, has not yet appointed counsel in response to this action,

1. **THIS COURT ORDERS** that the terms of this Order:
 - (a) are issued entirely without prejudice to the Defendants’ position that the Plaintiff is not entitled to any of the relief sought on this motion; and
 - (b) are accordingly made without prejudice to the Defendants’ claims and defences in this action, including without limitation their claims against the Plaintiff for any damages resulting from the issuance of this interim Order pending the return of the Plaintiff’s motion.

2. **THIS COURT ORDERS** that the Plaintiff’s motion is adjourned to the motion sittings the week of May 10, 2021 on the following terms:
 - (a) The directors of TCC, currently being Mr. Singh, Mr. Elgersma and Pamela O’Dell (“**Ms. O’Dell**”), shall each have read only access to the books and records of TCC, including: (i) pertaining to any current or successor bank accounts of TCC; and (ii) the accounting records of TCC hosted in Xero.com;
 - (b) No withdrawal or transfer from The Royal Bank of Canada Business Account #0001 103-247-3 shall be permitted without the joint written authorization from the Plaintiff’s designate to the board of directors of TCC, currently Pamela O’Dell, and

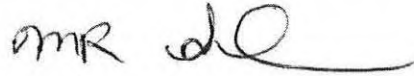
one of either Mr. Singh or Mr. Elgersma, as the current TCF designate and joint designate to the TCC board of directors, respectively.

- (c) There shall be no management services performed at the lands and premises having the civic address of 15 Wellington Street, Cambridge (the “**Property**”) without the unanimous written agreement of Mr. Singh, Mr. Elgersma, and Ms. O’Dell as the current directors of TCC, with the exception of the day-to-day upkeep of the Property, defined as utilities, insurance, appropriate taxes, essential waste disposal services, snow removal, security, de-icing and essential seasonal upkeep which shall continue to be managed by TCF on an as needed basis for the continued proper maintenance of the Property.
- (d) There shall be no management fees paid to TCF for the Property by TCC with the exception of fees in respect of the services in paragraph (c) above, which shall continue to be paid by the defendant, TCC on an as needed basis for the continued proper maintenance of the Property.
- (e) There shall be no contracts or agreements entered into by, or on behalf of, TCC without the written unanimous written agreement of Mr. Singh, Mr. Elgersma, and Ms. O’Dell as the current directors of TCC.
- (f) Coldpoint shall not take any steps to enforce the Loan Agreement between Coldpoint and TCC executed March 5, 2020 or its security interest in the collateral of TCC on account of the event of default cited in Coldpoint’s demand letter, dated March 11, 2021, until the return of the Plaintiff’s motion to appoint an interim receiver manager is adjudicated by this Court or an agreement is reached between

the Plaintiff, Coldpoint, TCC and TCF, unless and until (i) by the actions of RCC and/or TCF (acting jointly or separately), TCC commits a further event of default pursuant to the terms of the Loan Agreement, or (ii) with the consent of the Court.

- (g) TCC shall not hold meetings of its Board of Directors unless agreed upon by RCC and TCF, it being understood that each member of TCC is represented by counsel in this proceeding.
- (h) With respect to the Annual Meeting of TCC scheduled for April 15, 2021 at 1 p.m., the directors of TCC shall work cooperatively to prepare an agreed upon agenda and written resolutions to address the necessary business to be considered at the Annual Meeting.
- (i) The Parties will comply with the following schedule of steps to be completed for the return of the motion:
 - (i) Delivery of the Defendants' Responding material by April 14, 2021.
 - (ii) Delivery of the Plaintiff's Reply material by April 20, 2021.
 - (iii) Rule 39 Examinations to be completed by April 30, 2021.
 - (iv) Cross Examinations on affidavits to be held by April 30, 2021.
 - (v) Delivery of the Plaintiff's Factum and Book of Authorities by May 3, 2021.
 - (vi) Delivery of the Defendants Facta and Books of Authorities by May 7, 2021.

3. **THIS COURT ORDERS** that the above terms can be amended on the Consent of the Parties or by further order of the Court.

A handwritten signature in black ink, appearing to read 'MR Gibson', with a long horizontal flourish extending to the right.

Justice M.R. Gibson

(Signature of Judge)

RIVER CITY CHRISTIAN REFORMED CHURCH

and

GRAHAM SINGH et al

Defendants

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Kitchener

INTERIM ORDER

WEINTRAUB ERSKINE HUANG LLP

365 Bay Street

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Tel: (416) 597-5408

Vincent DeMarco, LSO# 72851D

Email: vincent.demarco@wehlitigation.com

Tel: (416) 306-8450 ext.2005

Lawyers for the Plaintiff

RCP-E 4C (September 1, 2020)

EXHIBIT “I”

This is Exhibit "T" referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely.*

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal stroke, positioned above a horizontal line.

A Commissioner for taking affidavits

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE SLOAN

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)
)

THURSDAY, THE 20TH
DAY OF MAY, 2021

B E T W E E N:

(Court Seal)

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

- and -

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION,
TRINITY CENTRES CAMBRIDGE, MILLER THOMSON LLP and
COLDPOINT HOLDINGS LTD.**

Defendants

INTERIM ORDER

THIS MOTION, made by the Plaintiff, River City Christian Reformed Church, for *inter alia*, the appointment of an interim receiver-manager over the Defendant, Trinity Centres Cambridge, pursuant to section 253(3)(b) of the *Not-for-profit Corporations Act* (the “**CNCA**”) and section 101 of the *Courts of Justice Act*, was heard on May 20, 2021 via video conference at the Waterloo Region Courthouse, 85 Frederick Street, Kitchener, ON N2H 0A7, after initially being adjourned on consent and on a without prejudice basis to today’s date, pursuant to the terms of the Interim Order of Justice Gibson issued March 24, 2021 (the “**March 24th Interim Order**”).

ON HEARING the submissions of the lawyers for the Plaintiff, and for the Defendants, Trinity Centres Cambridge (“**TCC**”), Trinity Centres Foundation (“**TCF**”), Graham Singh, Peter Elgersma, Coldpoint Holdings Ltd., and Miller Thomson LLP, and upon being advised that the Parties consent to the terms of this further Interim Order, on a without prejudice basis, given this Court’s direction that this matter should be heard in the Ontario Superior Court of Justice (Commercial List) (the “**Commercial List**”) in Toronto, Ontario,

1. **THIS COURT ORDERS** that, at the request of this Honourable Court, the Plaintiff’s motion shall be adjourned to a date to be scheduled, and that this action and motion shall be provisionally transferred to the Commercial List in accordance with paragraph 10 of the Consolidated Practice Direction Concerning the Commercial List.

2. **THIS COURT ORDERS** that the terms of the March 24th Interim Order are continued pending the determination of the Plaintiff’s motion, except as the March 24th Interim Order is specifically varied by this further Interim Order.

3. **THIS COURT ORDERS** that the Plaintiff shall: (i) forthwith pay to TCC \$14,125.01, representing outstanding rents owing for March, April, and May 2021 at the 2020 Basic Rent rate as set out in the Plaintiff’s Single Tenant Lease and Option Agreement with TCC; and (ii) shall continue to pay TCC the 2020 Basic Rent of \$4,166.67 plus HST on the first day of each and every month commencing June 1, 2021, pending the determination of the Plaintiff’s Motion. This Order is made entirely without prejudice to all Parties’ rights and remedies in respect of the appropriate 2021 rental amount to be paid by the Plaintiff to TCC.

4. **THIS COURT ORDERS** that the lands and premises having the civic address of 15 Wellington Street, Cambridge (the “**Property**”) shall continue to be managed by TCF in

accordance with the March 24th Interim Order, but that paragraph 2(d) of the March 24th Interim Order is hereby varied to add the following:

Notwithstanding the foregoing, pending the determination of the Plaintiff's motion, TCC shall also pay TCF \$13,000 plus HST of TCF's quarterly invoice(s), the first such payment to be made by TCC on June 30, 2021 for Q2 2021. This Order is made entirely without prejudice to the parties' respective positions and claims concerning the proper quantum of fees, if any, which are to be paid to TCF by TCC.

5. **THIS COURT ORDERS** that the Plaintiff, TCC, and TCF shall use their best efforts in an effort to finalize a subtenancy agreement between RCC and the subject Montessori school.

6. **THIS COURT ORDERS** that the above terms, including the terms of the March 24th Interim Order, can be amended on the consent of the Parties or by further Order of the Ontario Superior Court of Justice.

A handwritten signature in blue ink, appearing to read "J. Wilson", is written above a horizontal line.

(Signature of Judge)

RIVER CITY CHRISTIAN REFORMED CHURCH
Defendants

and

GRAHAM SINGH et al

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Kitchener

INTERIM ORDER

WEINTRAUB ERSKINE HUANG LLP
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Vincent DeMarco, LSO# 72851D

Email: vincent.demarco@wehlitigation.com

Tel: (416) 306-8450 ext.2005

Lawyers for the Plaintiff

RCP-E 4C (September 1, 2020)

EXHIBIT “J”

This is Exhibit "J" referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely*.

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal stroke at the bottom.

A Commissioner for taking affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE T. MCEWEN

)
)
)

THURSDAY , THE 27th
DAY OF MAY, 2021

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

- and -

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION,
TRINITY CENTRES CAMBRIDGE, MILLER THOMSON LLP and
COLDPOINT HOLDINGS LTD.**

Defendants

ORDER

THIS MOTION made on the consent of the Parties for an Order to transfer this action to the Commercial List of the Ontario Superior Court of Justice in Toronto, Ontario (the “**Commercial List**”) pursuant to paragraph 9 of the Consolidated Practice Direction Concerning the Commercial List, was read this day at the Commercial List, 330 University Avenue, 7th Floor, Toronto M5G 1R.

ON READING the Interim Order of Justice Sloan dated May 20, 2021, and upon being advised that the Parties consent to the terms of this Order,

1. **THIS COURT ORDERS** that this action be transferred from the Waterloo Region Courthouse, 85 Frederick Street, Kitchener, Ontario N2H 0A7 to the Commercial List pursuant to Rule 13.01.02(2) of the *Rules of Civil Procedure*.

2. **THIS COURT ORDERS** no costs for this motion.

McE T.

RIVER CITY CHRISTIAN REFORMED CHURCH
Defendants

GRAHAM SINGH et al

Plaintiff

Defendants

27 May 21

Order to go, on consent, as per the draft filed and signed.



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Kitchener

ORDER

WEINTRAUB ERSKINE HUANG LLP
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Vincent DeMarco, LSO# 72851D

Email: vincent.demarco@wehlitigation.com

Tel: (416) 306-8453

Lawyers for the Plaintiff

RCP-E 4C (September 1, 2020)

EXHIBIT “K”

This is Exhibit "K" referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely*.

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

A Commissioner for taking affidavits

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

RE: RIVER CITY CHRISTIAN REFORMED CHURCH, Plaintiff

AND:

GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER THOMSON LLP AND COLDPOINT HOLDINGS LTD., Defendants

BEFORE: S.F. Dunphy J.

COUNSEL: *Leanne Williams*, for Coldpoint Holdings Ltd.

Sara J. Erskine, Vincent DeMarco, for River City Christian Reformed Church

Mark van Zandvoort, for Graham Singh and Trinity Centres Foundation

Anna Markiewicz, for Trinity Centres Cambridge

HEARD at Toronto: August 23, 2021

CASE CONFERENCE ENDORSEMENT

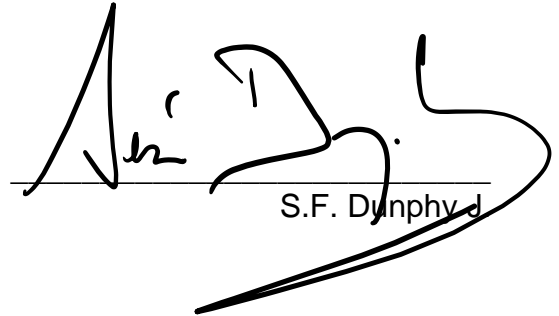
[1] I last dealt with this in March 2021 and there were optimistic signs that the partners in this joint venture (I use such terms in their colloquial and not legal sense) would be able to sort out their differences. The underlying assumption behind this venture – a vibrant and active church generating a healthy flow of revenue via regular donations from its members – has been frustrated by a lingering pandemic which has forcibly suppressed church attendance and with it revenues. As a result, it would appear that the opportunity to put an exceptionally advantageous mortgage back into good standing and avoid a liquidation has passed by without a resolution of the underlying dispute between the parties and it is time to permit the mortgagee to enforce.

[2] The competing receivership application – brought in aid of equitable remedies sought in connection with the partnership dispute – is essentially moot at this point. There seems little doubt that the best way forward for all concerned is to have the property sold

and the mortgage repaid as quickly and efficiently as possible while incurring as few sales and receivership costs as possible. That will maximize the size of the pool of funds the battling partners can continue to battle about if a solution does not materialize at some point.

[3] Ms. Miller shall circulate a draft receivership order blacklined to the Model Order to the parties to solicit comments if any as soon as possible. Meanwhile she is authorized to prepare her motion record and to arrange for a 9:30 appointment to have the receiver appointed next week. I do not expect the application not be opposed and would encourage the parties to iron out any minor drafting issues between now and then. As noted above, all efforts to avoid this outcome have already been expended. It is sad that a consensual outcome could not be found but this is not for want of effort by both sides I am sure.

[4] The Commercial List Office is directed to arrange an appointment as soon as reasonably practicable so that the sales process can get underway quickly and efficiently



S.F. Dunphy

Date: August 23, 2021

EXHIBIT “L”

This is Exhibit “L” referred to in the Affidavit of David Mr. Wood sworn remotely by DAVID M. WOOD stated as being located in the City of London in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 17th date of September, 2021 in accordance with *O.Reg 431/20, Administering Oath or Declaration Remotely.*

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal stroke at the bottom.

A Commissioner for taking affidavits

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

and

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES
FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER
THOMSON LLP and COLDPOINT HOLDINGS LTD.**

Defendants

CONSENT

DELOITTE RESTRUCTURING INC. hereby consents to act as Court-appointed Receiver in this proceeding should such an Order be granted by the Court.

Dated at Toronto, Ontario, this 17th day of September, 2021.

DELOITTE RESTRUCTURING INC.



Per: _____

Name: Toni Vanderlaan

Title: Partner

RIVER CITY CHRISTIAN REFORMED CHURCH

And

GRAHAM SINGH et al.

Plaintiff

Defendants

Court File No. CV-20-00646359-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **Kitchener**

CONSENT

THORNTON GROUT FINNIGAN LLP

Barristers & Solicitors
100 Wellington Street West
Suite 3200, P.O. Box 329, TD West Tower
Toronto ON M5K 1K7

Leanne Williams (LSO #41877E)

Email: lwilliams@igf.ca

Tel: (416) 304-1616

Lawyers for Coldpoint Holdings Ltd.

RIVER CITY CHRISTIAN REFORMED CHURCH

And

GRAHAM SINGH et al.

Plaintiff

Defendants

Court File No. CV-20-00646359-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **Kitchener**

AFFIDAVIT OF J. DAVID M. WOOD
(APPOINTMENT OF RECEIVER)

THORNTON GROUT FINNIGAN LLP

Barristers & Solicitors
100 Wellington Street West
Suite 3200, P.O. Box 329, TD West Tower
Toronto ON M5K 1K7

Leanne Williams (LSO #41877E)

Email: lwilliams@tgf.ca

Tel: (416) 304-1616

Lawyers for Coldpoint Holdings Ltd.

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM) FRIDAY, THE 21ST
)
JUSTICE CONWAY) DAY OF SEPTEMBER, 2021

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

and

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES
FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER
THOMSON LLP and COLDPOINT HOLDINGS LTD.**

Defendants

**ORDER
(appointing Receiver)**

THIS MOTION made by Coldpoint Holdings Ltd. (“**Coldpoint**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Trinity Centres Cambridge (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day via videoconference in light of the COVID-19 pandemic.

ON READING the affidavit of David Wood sworn September 17, 2021 and the Exhibits thereto and on hearing the submissions of counsel for the Plaintiff and such other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Leanne Williams sworn September 17, 2021 and on reading the consent of Deloitte to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”). Without limiting the generality of the foregoing, “Property” shall include the lands and premises of the Debtor municipally known as 15 Wellington Street, Cambridge, Province of Ontario and more specifically described in **Schedule “A”** hereto (the “**Real Property**”).

RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary

course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property including retaining a listing broker to market the Real Property for sale, including advertising and soliciting offers in respect of the Property or any part or parts thereof and

negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, including the Real Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding the foregoing, proceeding CV-21-00000281-0000 shall not be stayed as against the Debtor and continue as against the Debtor, Graham Singh, Peter Elgersma, Trinity Centres Foundation, and Miller Thomson LLP. Nothing in the within Order shall affect Proceeding CV-21-00000281-0000 other than with respect to Coldpoint Holdings Ltd.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. Notwithstanding the foregoing, all rights and remedies within proceeding CV-21-00000281-0000 shall not be stayed as against the Debtor, other than with respect to the Receiver and those affecting the Property.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related

liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall

exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates

and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

RECEIVER'S LEGAL COUNSEL

21. **THIS COURT ORDERS** that the Receiver may retain legal counsel to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order. Such legal counsel may include Thornton Grout Finnigan LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent legal counsel in respect of any legal advice or services where a conflict exists, or may arise.

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'www.insolvencies.deloitte.ca/en-ca/trinitycentrescambridge'.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. **THIS COURT ORDERS** that the Interim Orders dated March 24, 2021 and May 20, 2021 granted in this proceeding are hereby terminated upon the granting of this Order.

29. **THIS COURT ORDERS** that the Plaintiff's motion, as set out in its Notice of Motion dated March 15, 2021, is hereby rendered moot, and that any entitlement to costs which may be asserted by any party to this proceeding is hereby preserved. In the event that costs are not resolved with the consent of the applicable parties, a chambers appointment may be scheduled for further directions in respect of same.

30. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

32. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. **THIS COURT ORDERS** that Coldpoint shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of Coldpoint's security or, if not so provided by Coldpoint's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

35. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

REGISTRATION ON TITLE

36. **THIS COURT ORDERS AND DIRECTS** that, as soon as practicable, the Land Registry Office for the Land Titles Division of Waterloo (No. 58) accept this Order for registration on title to the Real Property described in Schedule "A" hereto

SCHEDULE “A”

Description of Real Property

Firstly:

(Registry) PIN03817-0022(R): Lot 3 East side of Wellington Street and south side of Beverly Street, Plan 615; City of Cambridge, Regional Municipality of Waterloo, being all of the PIN.

Secondly:

(Land Titles) PIN03817-0091(LT): Part lot 18, Plan 455, as in D31327; City of Cambridge, Regional Municipality of Waterloo, being all of the PIN.

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Deloitte Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Trinity Centres Cambridge acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

RIVER CITY CHRISTIAN REFORMED CHURCH

And

GRAHAM SINGH et al.

Plaintiff

Defendants

Court File No. CV-20-00646359-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **Kitchener**

ORDER
(appointing Receiver)

THORNTON GROUT FINNIGAN LLP
Barristers & Solicitors
100 Wellington Street West
Suite 3200, P.O. Box 329, TD West Tower
Toronto ON M5K 1K7

Leanne Williams (LSO #41877E)
Email: lwilliams@igf.ca

Tel: (416) 304-1616

Lawyers for Coldpoint Holdings Ltd.

TAB 4

Court File No. — CV-21-00000281-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE — MADAM) ~~WEEKDAY~~ FRIDAY, THE # 21ST
JUSTICE — CONWAY) DAY OF ~~MONTH~~ SEPTEMBER,
20^{YR} 2021

PLAINTIFF¹

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

~~-and-~~

DEFENDANT

Defendant

and

GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES
FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER
THOMSON LLP and COLDPOINT HOLDINGS LTD.

Defendants

ORDER
(appointing Receiver)

THIS MOTION made by ~~the Plaintiff~~² Coldpoint Holdings Ltd. (“Coldpoint”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as

¹ ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

² ~~Section 243(1) of the BIA provides that the Court may appoint a receiver “on application by a secured creditor”.~~

amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~ Deloitte Restructuring Inc. ("Deloitte") as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ Trinity Centres Cambridge (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day ~~at 330 University Avenue, Toronto, Ontario~~ via videoconference in light of the COVID-19 pandemic.

ON READING the affidavit of ~~[NAME]~~ David Wood sworn ~~[DATE]~~ September 17, 2021 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~ the Plaintiff and such other parties listed on the counsel slip, no one else appearing ~~for [NAME]~~ although duly served as appears from the ~~affidavit~~ Affidavit of ~~service~~ Service of [NAME] sworn ~~[DATE]~~ September 17, 2021 and on reading the consent of ~~[RECEIVER'S NAME]~~ Deloitte to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated³ so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ Deloitte is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property"). Without limiting the generality of the foregoing, "Property" shall include the lands and premises of the Debtor municipally known as 15 Wellington Street, Cambridge, Province of Ontario and more specifically described in Schedule "A" hereto (the "Real Property").

³ ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in

collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property including retaining a listing broker to market the Real Property for sale, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$~~_____~~50,000, provided that the aggregate consideration for all such transactions does not exceed \$~~_____~~100,000; and

~~⁴This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,⁵ shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, including the Real Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding the foregoing, proceeding CV-21-00000281-0000 shall not be stayed as against the Debtor and continue as against the Debtor, Graham Singh, Peter Elgersma, Trinity Centres Foundation, and Miller Thomson LLP. Nothing in the within Order shall affect Proceeding CV-21-00000281-0000 other than with respect to Coldpoint Holdings Ltd.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. Notwithstanding the foregoing, all rights and remedies within proceeding CV-21-00000281-0000 shall not be stayed as against the Debtor, other than with respect to the Receiver and those affecting the Property.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “Post Receivership Accounts”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the

employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a **“Sale”**). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, **“Possession”**) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

⁶~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

RECEIVER'S LEGAL COUNSEL

21. THIS COURT ORDERS that the Receiver may retain legal counsel to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order. Such legal counsel may include Thornton Grout Finnigan LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent legal counsel in respect of any legal advice or services where a conflict exists, or may arise.

FUNDING OF THE RECEIVERSHIP

22. ~~21.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ 100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances,

statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. ~~22.~~ **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. ~~23.~~ **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A" "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. ~~24.~~ **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. ~~25.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'www.insolvencies.deloitte.ca/en-ca/trinitycentrescambridge'.

27. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. **THIS COURT ORDERS** that the Interim Orders dated March 24, 2021 and May 20, 2021 granted in this proceeding are hereby terminated upon the granting of this Order.

29. **THIS COURT ORDERS** that the Plaintiff's motion, as set out in its Notice of Motion dated March 15, 2021, is hereby rendered moot, and that any entitlement to costs which may be asserted by any party to this proceeding is hereby preserved. In the event that costs are not resolved with the consent of the applicable parties, a chambers appointment may be scheduled for further directions in respect of same.

30. ~~27.~~ **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

32. ~~29.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. ~~30.~~ **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and

that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. ~~31.~~ **THIS COURT ORDERS** that ~~the Plaintiff~~Coldpoint shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of ~~the Plaintiff~~Coldpoint's security or, if not so provided by ~~the Plaintiff~~Coldpoint's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

35. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

REGISTRATION ON TITLE

36. **THIS COURT ORDERS AND DIRECTS** that, as soon as practicable, the Land Registry Office for the Land Titles Division of Waterloo (No. 58) accept this Order for registration on title to the Real Property described in Schedule "A" hereto

SCHEDULE "A"

Description of Real Property

Firstly:

(Registry) PIN03817-0022(R): Lot 3 East side of Wellington Street and south side of Beverly Street, Plan 615; City of Cambridge, Regional Municipality of Waterloo, being all of the PIN.

Secondly:

(Land Titles) PIN03817-0091(LT): Part lot 18, Plan 455, as in D31327; City of Cambridge, Regional Municipality of Waterloo, being all of the PIN.

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that ~~[RECEIVER'S NAME]~~ Deloitte Restructuring Inc., the receiver (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ Trinity Centres Cambridge acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

RIVER CITY CHRISTIAN REFORMED CHURCH

And

GRAHAM SINGH et al.

Plaintiff

Defendants

Court File No. CV-20-00646359-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **Kitchener**

ORDER
(**appointing Receiver**)

THORNTON GROUT FINNIGAN LLP

Barristers & Solicitors

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Toronto ON M5K 1K7

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Document comparison by Workshare Compare on September 17, 2021 3:24:18 PM

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RIVER CITY CHRISTIAN REFORMED CHURCH

And

GRAHAM SINGH et al.

Plaintiff

Defendants

Court File No. CV-20-00646359-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **Kitchener**

MOTION RECORD
Returnable September 21, 2021

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